FILE COPY

MAR 25 1929
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

NUMBER [redacted]IGINAL 6

IN EQUITY.

THE STATE OF LOUISIANA,
Complainant,

Vs.

THE STATE OF MISSISSIPPI,
Defendant.

REPLY TO SUPPLEMENTAL BRIEF.

RUSH H. KNOX,
Attorney General of Mississippi,
PAT HENRY,
RUFUS CREEKMORE,
ELMER C. SHARP,
HIRAM H. CREEKMORE,
Solicitors for the State of Mississippi.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

NUMBER 9, ORIGINAL.

IN EQUITY.

THE STATE OF LOUISIANA,
Complainant,

Vs.

THE STATE OF MISSISSIPPI,
Defendant.

REPLY TO SUPPLEMENTAL BRIEF.

RUSH H. KNOX,
Attorney General of Mississippi,
PAT HENRY,
RUFUS CREEKMORE,
ELMER C. SHARP,
HIRAM H. CREEKMORE,
Solicitors for the State of Mississippi.

INDEX OF SUBJECT MATTER

1. Table of cases and statutes alphabetically arranged with reference to pages where cited 3
2. Syllabus 4
3. The Pleadings 5-8
4. Defendant's Contention 8-9
5. Evidence of Acts of Soyereignty and Dominion
   A. By Complainant 9-15
   B. By Defendant 15-16
6. The Exhibits 16-21
7. The Argument 22-35
8. The Appendix 35--

TABLE OF CASES ALPHABETICALLY ARRANGED

Indiana Vs. Kentucky, 136 U. S. 1, 34 L. ed. 329 25

Louisiana Constitution, Article 230 24

Louisiana Statutes, Chapter 170, Laws 1898, As Amended 24-35

Louisiana Vs. Mississippi, 202 U. S. 1, 50 L. ed. 913 27

Michigan Vs. Wisconsin, 270 U. S. 295; 70 L. ed 595 28

New Mexico Vs. Texas, 275 U. S. 281; 72 L. ed. 280 31

SYLLABUS

1. Long acquiescence in the location of a particular boundary line, and the exercise of acts of dominion, sovereignty and control over the territory within it, is conclusive as between states.

Indiana Vs. Kentucky, 136 U. S. 1; 34 L. ed. 329.
Louisiana Vs. Mississippi, 202 U. S. 1; 50 L. ed. 913.
Michigan Vs. Wisconsin, 270 U. S. 295; 70 L. ed. 595.
New Mexico Vs. Texas, 275 U. S. 281; 72 L. ed. 280

2. The manner or method employed by a state in exercising dominion, sovereignty and control over a particular territory must be determined by the facts in each particular case, and with due regard to the physical characteristics of the disputed territory. Actually physical possession or occupation is not essential.

Louisiana Vs. Mississippi 202 U. S. 1, 50 L. ed. 913.
Michigan Vs. Wisconsin. 270 U. S. 295, 70 L. ed. 595.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

NUMBER 9, ORIGINAL.
IN EQUITY.

THE STATE OF LOUISIANA,
Complainant,

Vs.

THE STATE OF MISSISSIPPI,
Defendant.

REPLY TO SUPPLEMENTAL BRIEF.

I.

THE PLEADINGS

The first proposition which counsel argue in their second supplemental brief is that the pleadings in this case are insufficient to allege the defense that Mississippi has been exercising acts of sovereignty and dominion over the territory here in dispute, and that Louisiana has acquiesced therein.

Subdivision 6 of the original bill of complaint in this cause alleges:

> "That the State of Mississippi is claiming that the present boundary line between it and the State of Louisiana is approximately the same as it was in 1823, as shown by maps attached hereto and marked "Exhibits "A" and "B", and are claiming as Mississippi territory approximately all of

the lands east of said line of 1823, which claim is without foundation in fact or law,

"That the said State of Mississippi has sold lands east of said line and west of the channel of the Mississippi as it existed at the time of said avulsion of 1912 and 1913, and has issued patents therefor, as shown by certified copies of forfeited land patents Numbers 15644, 15554, 15555, 15556, 15557, 15558, 15559, 15660, 15576, 15792, made by R. D. Moore, Land Commissioner of the State of Mississippi, contained in four sheets attached together, made part hereof by reference, and marked "Exhibit K."

"That the sheriff and Tax Collector of Issaquena County, Miss., sold to the State of Mississippi on the 1st of March, 1897, for delinquent taxes for the year 1896, as shown on three sheets attached together, being certified copies made by R. D. Moore, Land Commissioner of the State of Mississippi, made part hereof by reference and marked 'Exhibit L.' "

Subsection 6 of the answer to the original bill reads as follows:

"It is admitted that the State of Mississippi claims that the present boundary line between it and the State of Louisiana is approximately the same as it was in 1823, as shown by maps marked 'Exhibit A' and 'Exhibit B' to the original Bill, and it is true that all of the lands east of said line shown on said maps are claimed as Mississippi territory. But it is denied that such claim is without foundation in fact or law. The facts are that the territory in dispute has been territory of the State of Mississippi from its organization as a State in 1817 to the present time, the said land being surveyed by surveyors of the United States of America in the year 1823, platted as a part of the State of Mississippi and sold by the United

States of America as lying within the State of Mississippi. At all times since 1817 said lands have been claimed by the State of Mississippi; have been assessed with taxes by the State of Mississippi: and the owners thereof have at all times recognized the sovereignty of the State of Mississippi thereto. And the said land has never been assessed for taxes in the State of Louisiana, nor until a short time before the bringing of this suit did the State of Louisiana make any claim to said land at any time, as this defendant is informed and believes.

"It is admitted that the State of Mississippi has sold land East of the boundary line as it existed in 1823 and west of the line claimed by the Complainant to be the channel of the Mississippi River as it existed at the time of the alleged avulsion of 1912 and 1913 and patents have issued for said land as alleged in the original Bill.

"It is admitted that the Tax Collector of Issaquena County, Mississippi, sold to the State of Mississippi for delinquent taxes the lands described in Exhibit L to the original Bill of Complaint.

"It is denied that all or any of said land is Louisiana territory and it is denied that the action of the State of Mississippi and its officials in selling said land and issuing patents therefor, is illegal, null and void, nor is such action an attempt to appropriate territory belonging to the State of Louisiana.

"It is denied that the sovereignty of the State of Louisiana has been infringed by the State of Mississippi, but since the State of Louisiana, by this suit, has claimed the said land, it is true that it is now necessary that the boundary between said states at this point be determined."

Issue having thus been so sharply drawn by the

pleadings, it is deemed that nothing further need be said with reference to this proposition.

II.

Defendant's Contention

Counsel in their brief state that the question for decision on this issue is:

> "Did Mississippi take possession and control of this accretion, with the acquiescence of Louisiana?"

Stating the same proposition in slightly different words, counsel for complainant say that the contention of the defendant is:

> "That Louisiana territory can be acquired by an assessment and sale in Mississippi without the alleged purchaser taking possession and without any knowledge of such assessment, or sale by Louisiana, or its citizens."

The court will observe from this statement that counsel for the complainant have assumed the very fact which is in issue, viz:, that this disputed territory is an accretion, and that it belongs to Louisiana. Their whole argument apparently is based on the assumption of these facts. That this is true is most clearly manifested by the citation in their brief of a certain section of the Louisiana Civil Code, and a Louisiana case construing it, which holds that:

> "Actual notice of any record affecting real estate, where that record is not in the Parish where the land is located, is not legal or binding notice."

This statute and the case construing it would be applicable if it were admitted that the land in question is actually located in and is a part of the State of Louisiana, and if this suit was a suit between individuals instead of states. But here the suit is not between individuals and it is not admitted that the territory in question is actually a part of the State of Lou-

isiana: that being the very question which this court has before it for determination.

In dealing with this proposition, counsel for the defendant will not assume as a fact that the disputed territory is a part of Louisiana, as do counsel for complainant, nor will it be approached upon the assumption that the disputed territory is actually a part of the State of Mississippi, although defendant's testimony establishes such fact. On the contrary, in this brief this proposition will be treated upon the assumption that the court is in doubt as to whether the disputed territory is actually Louisiana territory, or Mississippi territory, and that with such doubt in its mind, evidence of facts relative to the exercise of acts of dominion, sovereignty and control over the disputed territory by one state and acquiescence therein by the other state will be of aid to the court in determining which state is the true owner thereof.

III.

Evidence of Acts of Sovereignty and Dominion.
A—By Complainant.

Counsel in their brief cite the court to certain portions of the record in the effort to show that Louisiana claimed the disputed territory and actually occupied it while Mississippi made no claim thereto. An examination of the testimony cited shows it to be negligible and of little value in so far as giving support to the contention of complainant is concerned.

An analysis of this testimony shows:

George R. Newman, Ernest Newman and their uncle, J. B. Beard, testified that they never heard of Mississippi claiming the land.

Ernest Newman testified that the land was considered to belong to his father and that he paid his taxes in Louisiana.

The record shows that although Newman paid taxes in Louisiana on Willow Point Plantation, yet he never

returned the property here in question to the taxing authorities of Louisiana for taxation, it never appeared on the tax rolls of East Carroll Parish, Louisiana, and taxes were never paid on it by him, nor anyone else, who claimed under the Louisiana title.

"Q. Have you seen the map showing or disclosing the property which the State of Louisiana claims in this case accreted to Willow Point Plantation?

A. Yes, sir.

Q. This map shows Willow Point Plantation as Lots 6, 7 and 8 on the Louisiana side, does it not?

A. Yes, sir.

Q. That is Exhibit J. It shows the Newman tow head going out here in a general northeast direction for five or six miles?

A. Yes, sir.

Q. Now, there is more than five thousand acres of land in this map, is there not?

A. Yes, sir; I would judge there would be.

Q. Now then, did the State of Lousiana, or your father, or anybody who ever owned this property at any time ever assess themselves with the 5,000 acres of land shown here on this Newman tow head, Exhibit J, for taxes on it?

A. Well, I hardly think so." R. p. 59.

Newman also testified that his father ran cattle on the tow head and had a cattle range there.

This testimony may be true, but it is no evidence that Newman claimed the land as his own. On the contrary, as has been demonstrated above, his whole course of conduct refutes any such theory. The most that can be said is that he was using this wild, open and unoccupied land as a pasture and range for his cattle. It is also significant to note that when the

Newman heirs conveyed Willow Point plantation in 1907 or 1908, they conveyed only the plantation itself, describing its acreage and making no attempt to convey the tow head or any part of the property here in question. R. p. 78.

In their brief, counsel make much of the fact that defense witness, Lawrence Towns, testified that he had a lease on the tow head from Mr. Learned, the claimant under the Louisiana title. In considering this testimony, it should be kept in mind that Towns is an ignorant negro who is unable to read or write, and knew nothing whatsoever about what was contained in his lease.

His testimony, however, does show that he is thoroughly familiar with all this territory:—Scruggs Island, Hopkins Island, Willow Point and Newman's tow head. He knew the territory in question as "Scruggs Island," and as being Mississippi territory. R. p. 238 and 239. Newman's tow head was on the other side of the river and it was known as Louisiana territory. R. p. 237.

"Q. On which side of the river is the property you know as Newman's Tow Head? On the Lousiana side or the Mississippi side?

A. On the Louisiana side.

Q. That is the present river?

A. Yes, sir.

Q. Did you ever know, or call the island on which you had your hogs, by the name of Newman's Tow Head? Did you ever call it that or not?

A. No, sir." R. p. 237.

* * * *

"Q. What is the land over there where you pointed out the lake and where those big trees were measured—what do you call that?

A. I calls it—I would call it Mississippi."

* * * *

"Q. What do you call that where you put your hogs?

A. What do I call that?

Q. Yes?

A. I just call it an island.

Q. Is that the island you refer to as Scruggs' Island?

A. Yes, sir." R. p. 238.

With reference to the lease of Learned to Towns, the record shows that the witness had two leases, one from Captain Reed and one from Mr. Learned. Some of this land was in Issaquena County, and some of it was the island or tow head.

"Q. You also leased some land from Mr. Learned in Issaquena County, on the Mississippi main shore, did you?

A. I leased his land, Mr. Learned, down in Issaquena county. That is what Mr. Charles Henry told me when he came up there for Capt. Reed.

Redirect Examination

By Mr. Butler:

Q. That land on this side of the river is called Scruggs' Island, and the land on the other side of the river is called Newman's Tow Head—was it both sides of the river?

A. Yes, sir; this same lease. That is what he told me by word of mouth, to keep everybody off of it." R. p. 241.

The record also shows that the first lease made by the witness was from Captain Reed. That pursuant to this lease, the negro went on to the island for the purpose of homesteading it; planted corn and turnips on it and raised hogs there. He paid as rental on this

place to Captain Reed, one dollar per year. After this lease had been made, and after the witness had come upon the land, had planted his corn and raised his hogs, Mr. Learned had a survey made, "all the way round from Chotard to Arcadia," and then he (Towns) had to make a second lease. He understood this to be another lease of the same land he had rented from Capt. Reed. It was this second lease which was offered in evidence by the complainants. The record at pages 224 and 239 with reference to these matters shows the following:

"Q. You say there is an island called Scruggs' Island?

A. Yes, sir.

Q. Did you lease that island, or a part of it from Mr. Learned?

A. I leased it from Mr. Capt. Reed. He brought the lease to me.

Q. For that island?

A. Yes, sir.

Q. All the same, the island you call Scruggs' Island is the one you leased from Mr. Learned as the Newman Tow Head?

A. Yes, sir; I thought that is what it was when he came to me.

Q. Was it not exactly the same property?

A. Yes, sir; just the same ground down there?

Q. Yes; regardless of its name?

A. Yes, sir." R. p. 239.

* * * *

"The paper I handed you? It is a lease of Mr. Learned and Capt. Reed. They leased me that island. I went over there on that island and tried to homestead it for a home, and I met some people and they told me that I could not home-

stead it, and there was no land in this country no more, and so shortly after, a few years after, Capt. Reed, the sheriff of Adams County, he came down there and came up there and had me to have that lease made out. I had another one. That is the second one that he gave me. He had it made out. I had to sign it up. I was on his island. I have another lease at home in my trunk. He told me that he would lease it to me and I said to him, 'Captain, what will the lease be,' and he said not over a dollar, and I said, let me have it for five years, then. I found out that I could not get it and it was no use for me to try and get in there, and after I found out that I could not get it I just leased it from him for a dollar a year, and I went to the Justice of the Peace office and signed it up. I had some hogs and things up there, and got to doing pretty good in there. Well, they come out there Mr. Learned and Capt. Reed and surveyed all around out there, all the way around from Chotard to Arcadia—do you want me to tell you all that I know about that?'' R. p. 224 and 225.

The court will observe that Towns knew the property in question as Mississippi territory, went into possession of it under a lease from Capt. Reed the sheriff of Adams County, Mississippi, and raised his hogs, planted turnips, etc. Thereafter Mr. Learned had him to sign the second lease. He didn't know what the lease said nor how it read. He only knew that the land was Scruggs' Island, Mississippi territory, and that he had leased it. It is manifest that this testimony does not support the contention of complainant, but that it shows the witness knew the land in question to be Mississippi territory and recognized it as such.

This is the only testimony to which counsel for complainant refer as showing that the State of Louisiana, or its citizens, considered this property to belong to it rather than to Mississippi.

B—By Defendant

Let us now review the testimony offered by the State of Mississippi showing that it asserted and exercised acts of sovereignty, dominion and control over the territory and that Louisiana acquiesced therein.

It is undisputed in the record and expressly admitted by counsel in their brief that at all times prior to the years 1890-1893 (during which time complainant says Island 98 washed away) the State of Mississippi owned territory in the identical location as that here in dispute, and with the acquiescence of the State of Louisiana, exercised all the acts of sovereignty that a state customarily exercises over its territory by assessing it for taxation, selling it for the nonpayment of taxes and otherwise dealing with it as its own.

With reference to Mississippi's actions in this regard subsequent to 1890-1893, the record shows:

Defendant's witness, C. F. Hume, has been familiar with the territory in question since 1896. He always heard it spoken of as Scruggs' Island or Island 98.

"Q. You spoke of this Island 98. When did you first hear of it being called Island 98?

A. When I went up in the Delta in '96.

Q. Who did you hear call it that?

A. Every one that spoke of it called it by that name. They would call it Scruggs' Island, some would.

Q. Called it Scruggs' Island?

A. Some did; yes, sir." R. p. 206.

At this time this territory was connected to the Louisiana shore by what defendant claims to be the filled up river bed of 1882. R. p. 207.

Defendant's witness, William Miller, testified that he always understood this territory to belong to Mississippi.

"Q. Prior to that cut off did you understand that the land on the channel side of the river—that the island was on Mississippi territory? I mean while the channel was west of the island?

A. Yes, sir.

Q. Before the cut off?

A. Yes, sir.

Q. I will change my question. While the channel was west of Island 98, and prior to the cut off, did you understand that the—and while the channel ran between Island 98 and the land west of there on the other side of the Mississippi river, did you understand that the island was Mississippi territory, and that the land on the other side was Louisiana territory?

BY MR. SHARP:

We object to that as incompetent, irrelevant and immaterial. It calls for his understanding, and he has no knowledge of the title of that land. I just want to get the objection in the record.

BY THE COMMISSIONER:

Q. Go ahead and answer the question..

BY MR. BRANDON:

Q. Go ahead and answer the question? Do you know whether it was in Mississippi or Louisiana?

A. Mississippi is my idea." R. P. (Folio) 519 and 520.

IV.

The Exhibits

In order to show the exercise of acts of ownership, sovereignty and control by the State of Mississippi over the land here in question, the defendant introduced its exhibits, A, B, C, D, and E, and in order to show that the State of Louisiana did not exercise any acts of sovereignty or control over the disputed terri-

tory during this period of time, the defendant introduced Exhibits F, G, H, I, J, K, L, M, N, and V-2.

The record is undisputed and counsel in their brief so admit that all of this land, or land in the identical location, was, prior to the years 1890-1893, Mississippi territory; was assessed for taxation by the State of Mississippi, was sold for the non-payment of taxes, and in other ways was treated by Mississippi in the same manner as other Mississippi territory was treated or dealt with. For this reason, only that part of the exhibits which deal with the property after the years 1890-1893 will be especially stressed in this brief.

Defendant's Exhibit A is a certified copy of the land assessment rolls of Issaquena County, Mississippi, covering assessment of the land here in controversy from the years 1848-1926. During this entire period of time, and especially between the years 1882-1894, (during which period the State of Louisiana claims the island to have been washed away), and after the year 1894 up until the present time, these lands were continuously assessed for taxation and appeared on the tax rolls of that county. The assessments during this period of time showed the names of the owner of the property, its description, and the number of acres in each individual tract which was assessed. It is significant to note that the assessment rolls during this period of time show the acreage of Island 98 to vary from year to year as new assessments were made, showing thereby that the ravages of the river were considered in each instance.

Defendant's Exhibit B is a certified copy of the record of lands sold to the State of Mississippi for delinquent taxes in Issaquena County covering the territory here in question. This exhibit shows that in the years, 1869, 1879, 1880, 1881, 1888, 1891, 1895, 1897, 1898, 1900, 1901, 1902, 1906, 1907, 1912, 1915, 1922, 1923, 1924, and 1925 part of the lands here in controversy were sold by the State of Mississippi for delinquent taxes.

Exhibit C. is a certified copy of an order of the board of supervisors of Issaquena County, Mississippi, entered at the August, 1890, term acting on a petition filed by the owners of a part of the lands here in controversy. That order reduced the assessed valuation of the lands therein named reciting in said order that the assessment which had formerly been fixed on said lands was an over valuation of the same.

Exhibit D is a certified copy of the Tract Book of Issaquena County, Mississippi, showing the original entry in Issaquena County, Mississippi, of the lands here in question.

Exhibit E is a certified copy of that portion of the sectional index of Issaquena County, Mississippi covering transfers of the lands here in question.

Exhibits G, H, and I are certified copies of the assessment roll of East Carroll Parish, Louisiana, showing the assessments of Willow Point plantation for the years 1876-1926. These exhibits show that in 1876 Willow Point was assessed for taxation in East Carroll Parish, Louisiana, as belonging to Mrs. Annie E. Newman, administratrix, with the number of acres as 719. For the years 1880-1881, Willow Point was assessed for taxation by the taxing authorities of that parish with the acreage as 640. For the years 1882, 1883, and 1884 the land was assessed partly to Mrs. Annie E. Newman, and partly to Walter A. Newman, with the acreage fixed at 563. For the year 1885, Willow Point was assessed to these same parties with the acreage at 615.

For the years 1886, 1887, 1888 and 1889, the plantation was assessed to these same parties with an acreage fixed at 375. For the years 1899, 1900, 1901, 1902, 1903, 1904 and 1905 the plantation appears on the assessment rolls as belonging to the estate of W. A. Newman and is assessed as containing 259 acres, all of which is outide of the levee. For the year 1906, Willow Point Plantation is assessed as belonging to the estate of W. S. Newman and composed of 150 acres.

For the years 1907, 1908, 1909, 1910 and 1911 the property is assessed as belonging to the estate of W. A. Newman with the number of acres as 50; the assessment roll for these years showing the following:

> "Consisting 150 acres, more or less; all covered in river but 50 acres."

For the years 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925 and 1926, Willow Point plantation is assessed to Rufus F. Learned with the number of acres as 160.

Exhibit J is a certified copy of a deed from Mrs. Annie E. Newman to W. A. Newman, dated October 26th, 1882, conveying, among other lands, a half interest in Willow Point plantation. This deed contains the following description with reference to Willow Point plantation:

> "Also the East-half of said Willow Point Plantation, so as to convey herein Three Hundred (300) acres to be divided from the West-Half by a line commencing at a point at or near the center of the South boundary of Lot Number Three (3) and running due North to the Mississippi River so as to make or enclose that quantity—say three hundred (300) acres of Land. It being well understood by Vendor and Vendee that by reason of the caving of the banks of the river, the said Willow Point Plantation according to recent surveys has been reduced in quantity to Six Hundred (600) acres."

Exhibit K is a certified copy of a deed from J. W. Dunn, tax collector of East Carroll Parish, Louisiana, to J. S. Millican, dated May 12th, 1894. This deed conveyed:

> "The following described property assessed to the estate of Mrs. Annie E. Newman for the year 1893 according to the assessment rolls for said year, to-wit: Willow Point Plantation, 116 acres, being that portion of the original Willow Point Plantation fronting the Mississippi River."

Exhibit L is a certified copy of the deed from J. S. Millican to J. A. Craig, dated May 6th, 1895. This deed conveys the following described property:

> "Willow Point Plantation in said parish and state containing 116 acres more or less, being that portion of the original Willow Point Plantation fronting the Mississippi River."

Exhibit M is a certified copy of a deed from W. E. Dunn, tax collector of East Carroll Parish, to J. H. Gilfoil, Jr., and J. M. Hambley, dated June 30th, 1908. This deed was a tax collector's deed evidencing the fact that Willow Point Plantation was sold for the nonpayment of taxes due for the year 1907. The deed describes the premises conveyed as being,

> "Willow Point Plantation, 116 acres, being that portion of Willow Point Plantation fronting on the Mississippi River."

Exhibit N is a certified copy of a Power of Attorney, dated March 26th, 1912, appointing C. S. Wiley as agent and attorney in fact for Rufus F. Learned and Andrew B. Learned and their wives to accept in their name a certain deed conveying to them Willow Point Plantation. This power of attorney describes the lands to be conveyed as follows:

> "East-Half of the Willow Point Plantation situated in the Parish of East Carroll, State of Louisiana, said Willow Point Plantation having been composed of the East-Half of Lot or Fractional Section No. Two (2) and the whole of Lots or Fractional Sections Nos. Three, Four, Five and Six all in Township Nineteen, North, Range Fourteen, East, said E ½ thereof being the same portion of the original Willow Point Plantation which was conveyed to W. A. Newman, Sr., by his mother, Mrs. Ann E. Newman by act of giving in payment and partition dated October 26th, 1882, and recorded in Conveyance Book "Q" page 44, of the records of East Carroll Parish, Louisiana, and

which is supposed to contain One Hundred and Sixteen (116) Acres of land, all located on the river side of the Mississippi River Levee."

Exhibit N also contains a certified copy of a deed, dated April 29th, 1912, from George R. Newman, Ernest Newman and Mrs. Florence B. Newman to Rufus F. Learned and Andrew B. Learned, conveying the East-half of Willow Point Plantation and describing it as follows:

"which plantation was composed of the East-Half of Lot or Fractional Section No. Two (2) and of the whole of Lots of Fractional Sections Nos. Three, four, five and six all in Township Nineteen (19) North, Range Fourteen (14) East, said East-Half thereof being the same portion of said original Willow Point which was conveyed to said Walter A. Newman, Sr., by his Mother, Mrs. Ann E. Newman by acts of giving in payment and partition dated October 26, 1882, and recorded in Conveyance Book "Q" page 441 of the records of East Carroll Parish, Louisiana, it being understood by the parties hereto that most of the East-Half of said plantation acquired by said Walter A. Newman, Sr., as aforesaid has caved into the Mississippi River since said date and that the present acreage of said East-Half of said plantation is in nowise warranted; but is supposed and estimated to be only about One Hundred and Sixteen acres of land, all located on the river side of the Mississippi River Levee."

Defendant's exhibit V-2 is a certified copy of a map of East Carroll Parish, Louisiana, made by Thomas F. Montgomery, under the direction of the board of police of East Carroll Parish and copyrighted on the 1st day of November, 1904. This map, adopted and used by the authorities of that parish as its official map, does not include thereon as a part of that parish any of the lands which are here in question.

ARGUMENT

In dealing with the proposition here under consideration, the court must bear in mind that the manner by which a state exercises sovereignty and dominion over a particular territory or tract of land is governed in large manner by the physical characteristics of the land or territory and by its fitness or adaptability for actual possession, cultivation or settlement. The territory which is here in dispute is low, alluvial lands along the Mississippi River, subject to overflow at all times when the river rises, and unprotected in any manner whatsoever by levees or dikes. For these reasons, the land is not fitted for cultivation or settlement except in the most haphazard manner, but has grown up in cotton wood and willow timber.

It is undisputed that prior the years 1890-1893 this territory belonged to Mississippi and was so recognized by Louisiana. During this period of time Mississippi, as shown by the record, exercised acts of possession, sovereignty and control over these lands. This evidence was furnished by showing that Mississippi assessed the lands for taxation and sold them for the nonpayment of taxes. The record also shows that subsequent to the years 1890-1893, Mississippi assessed these same lands for taxation, sold them for the nonpayment of taxes and dealt with them as her own. So far as this record discloses, there has been no change either by Mississippi or Louisiana since the years 1890-1893, in the method or manner in which each of them dealt with these lands, nor has there been any change by the individuals who owned Willow Point on the Louisiana side of the river, or Island 98 on the Mississippi side of the river with reference to their manner of dealing with or considering these lands.

The laws of Mississippi with reference to the assessment of lands provide that the roll shall be made up by the owner of the property giving in to the assessor, under oath, the lands owned by him. The duty is then

imposed upon the tax assessor to see that all of the land in his county appears on the assessment roll and a final duty is imposed upon the board of supervisors to carefully examine the roll for the purpose of seeing that all of the property in the county subject to taxation is embraced therein. See pages 73 to 74 and 81 to 84 of defendant's original brief, and authorities there cited.

The Louisiana law provides that it is the duty of each taxpayer to fill out a list of his property in accordance with forms to be furnished to him and to make oath thereto. It is also provided that the tax assessor shall personally visit each person who owns taxable property to see that the tax list is filled out properly, and that the property is assessed at its actual cash value. It is also provided that the tax assessor shall place upon the assessment list all property within the state subject to taxation and if he intentionally or negligently omits therefrom any taxable property, then he shall be liable for the taxes due on the property so omitted. For full text of these statutes see appendix, pages 36—

It is, therefore, seen that the Mississippi and Louisiana laws with reference to the assessment of lands for taxation are very similar. In each case, the owner of the property makes a list under oath of the property owned by him and turns the same in to the tax assessor. In each case, the tax assessor has the authority, and it is his duty, if any property is left off the roll, to assess the same himself.

The record here shows that these lands were assessed by the tax assessor of Issaquena County, Mississippi, and taxes were paid thereon by the owner, or where default was made in the payment of the tax, the lands were sold. The record shows that these lands were not assessed by the State of Louisiana, either by the owners of Willow Point listing them, or by the assessor placing them upon the roll, and this even though the law made it mandatory upon the

owners thereof, if they claimed the same to be in Louisiana, to list them as taxable property under the laws of the State of Louisiana, and if they failed so to list them, then it was the duty of the tax assessor to place them upon the assessment roll, if he considered them to belong to Louisiana.

Counsel in their brief attempt to explain these facts by saying that this territory was an accretion to Louisiana, and that under the Louisiana law, accretions are not usually assessed unless they are sold. This attempted explanation is fallacious for two reasons. In the first place, such argument assumes that the disputed territory is an accretion to Willow Point in Louisiana, and, therefore, Louisiana territory.

In the second place, it is not the law in Louisiana that accretions are not to be assessed unless they are sold. Counsel cite no authority to support this statement, and there is none. Article 230 of the Constitution of the State of Louisiana provides that certain property, and no other, shall be exempt from taxation. Accretions to land lying on the Mississippi River, or other bodies of water, are not among those things which are exempted from taxation by the Constitution, nor are they exempted by any statute of the State of Louisiana. The sections of the Louisiana Code which are set forth in the appendix hereto show conclusively that this property was subject to taxation, if it was within the boundaries of the State of Louisiana, but the record shows that neither the owners of Willow Point Plantation, nor the taxing authorities of East Carroll Parish, Louisiana, ever made any attempt to return it for taxation, or to place it upon the assessment rolls of that parish.

Counsel, in their supplemental brief have nothing whatsoever to say with reference to Montgomery's map of East Carroll Parish; nor is an attempt made by them to explain why this map, as adopted by the Board of Police of that parish, in 1904, is not an acknowledgment by the authorities thereof that the ter-

ritory here in dispute was not a part of Louisiana and was not claimed by that parish as being a part of it.

In the case of Indiana vs. Kentucky, 136 U. S. 1, 34 L. Ed. 329, the court had the following to say with reference to a certain map made under the authority of Congress and introduced in evidence:

> "It appears that on March 26, 1804, Congress authorized a survey into townships, six miles square of the public lands north of the Ohio River and east of the Mississippi River. Chap. 35, 2 Stat. 277. Under this Act a survey was made of the land in the vicinity of Green River Island in the month of December, 1805, and in April, 1806, and it did not include the island within the territory north of the Ohio, but treated the bank of the bayou or channel north of the island as the bank of that river. The notes of this survey were given in evidence and show conclusively that the officers of the government at that time did not consider the tract in controversy as forming any part of the territory of Indiana, but did consider that the waters of the Ohio River running north of it made the tract now in controversy an island of the river. This survey from the time it was made has been regarded as establishing the fact that the southern boundary of Indiana lies north of the island. It is now insisted that the lines of this survey were intended merely as meander lines run for the purpose of defining the sinuosity of the bank and the means of ascertaining the quantity of land then subject to sale, and were not intended as a boundary line of the island. Conceding for the purposes of this case, that this is true, so far as related to the fixing of the precise line of low-water mark, to which the territory of Indiana extended, it does not affect the force of the survey, as evidence that the island was not included within that territory, ac-

cording to the judgment at that time of the surveying officers of the United States."

Counsel have devoted a great part of their brief to distinguishing the facts in the cases which were cited by defendant in its original brief, which cases announced the general and well settled rules of law with reference to the proposition here under consideration. Counsel have attempted to show that in the cases therein cited the territory which was in dispute was in the actual physical possession and occupancy of persons who acknowledged allegiance to one state and claimed title under it, or that the decisions in those cases were based on compacts or agreements relative to their boundaries which had previously been entered into by the states.

It is true that in a number of the cases cited the decisions of the court were based upon the fact that the states had by their own agreement previously fixed their boundaries, and that in some of the cases the territory in dispute was in the actual physical possession and occupancy of persons who claimed under titles from one of the litigant states and acknowledged allegiance to it. Even so, the principles announced by those cases are applicable to and controlling of the facts in this case.

But those cases do not state the rule to be that it is necessary for one state to be in the actual physical possession and occupancy of the disputed territory in order for these principles to apply. Nor were all of the cases cited of such nature or character; some of them dealing with disputed territory which by its very nature was incapable of being physicallly occupied in the generally accepted sense. Each case must be decided upon its own merits, and the physical characteristics of the disputed territory must in each instance be the guide of the court in passing upon the question of what facts will constitute the exercise of acts of dominion, sovereignty and control over the particular territory by one state and acquiescence therein by another.

In the case of Louisiana vs. Mississippi, 202 U. S. 1, 50 L. Ed. 913, the facts were very similar in their nature to the facts in this case. The bone of contention there was as to which state owned certain valuable oyster beds. The lands which were within the disputed territory were wild, low, and swampy; commonly known as the "Louisiana Marshes."

When Louisiana was admitted to the Union as a state in the year 1812, the enabling act gave to her all islands within three leagues of her coast. When Mississippi was admitted into the Union as a state in the year 1817, the act of admission gave to her all islands lying within six leagues of her coast. Some islands were within three leagues of the Louisiana coast and also within six leagues of the Mississippi coast. The waters containing the oyster beds and those low, swampy lands which were known as the "Louisiana Marshes" came within this disputed area, and it was the establishment of control over the waters containing these oyster beds that was the real object of the filing of the suit.

The court decided that Louisiana was the owner of this territory, basing its decision upon a number of grounds, the first of which was that inasmuch as Louisiana was admitted to the Union in the year 1812, and her boundaries then defined by the enabling act, Congress could not thereafter in the year 1817, when Mississippi was admitted to the Union as a state, take away from Louisiana and give to Mississippi any lands that had previously been given to her (Louisiana.)

Another one of the grounds for the decision of this case, however, was that Louisiana had exercised dominion and sovereignty over the disputed territory since its admission to the Union as a state, with Mississippi acquiescing therein, and, therefore, as between the two states, this was conclusive of their rights.

The facts with reference to the exercise of acts of dominion and sovereignty by Louisiana over this territory and acquiescence therein by Mississippi are very

similar to the facts in the case at bar. A number of surveys and maps made of this territory by the various branches of the United States Government showed it to belong to Louisiana. The lands were assessed for taxation by the taxing authorities of Louisiana, taxes were paid to that state, and it exercised political and police control and jurisdiction over it.

On Mississippi's part, a number of the official maps of the State of Mississippi showed the land as without the boundary of the State of Mississippi, and only one map of Mississippi, that which was issued in the year 1904 by the Railroad Commission of that state, showed these lands as a part of it.

In summarizing this evidence, the court said the following:

> "The record contains much evidence of the exercise by Louisiana of jurisdiction over the territory in dispute, and of the general recognition of it by Mississippi as belonging to Louisiana. Apparently, Louisiana had exercised complete dominion over it from 1812 with the acquiescence of Mississippi, unless the fact that the latter made a general reference to islands within 6 leagues of her shore in her Code of 1880 indicated otherwise. But the evidence fails to satisfy us that she attempted any physical possession or control until after 1900. The few instances referred to as showing that Mississippi asserted rights in the disputed area are of little weight and require no discussion."

In the case of Michigan vs. Wisconsin, 270 U. S. 295, 70 L. Ed. 595, the court dealt with the question of disputed boundaries between the two states in three different sections.

In the Menominee River section, the boundary was described in the enabling acts as being the center of the main channel of the Menominee River, and the territory in dispute was certain islands in the river.

The argument was made by Wisconsin that in the year 1850 there was an adjustment of the boundary in this section between the states of Michigan and Wisconsin, and that this adjustment of the boundary was conclusive on the parties litigant. The court declined to pass on this contention, but based its decision upon the fact that Wisconsin for more than fifty years had had the undisputed and undisturbed possession of substantially all the islands in the river in the disputed area and had exercised jurisdiction and dominion over them with the knowledge and acquiescence of Michigan.

The facts in that case with reference to the exercise of jurisdiction and sovereignty over these islands were substantially as follows: In 1840 a certain Captain Cramm made a report to Congress in which he directed attention to the fact that it was very difficult to determine the main channel of the river at all places on account of the numerous number of islands therein, and suggested that for a part of the way down the river, the boundary should follow the extreme left hand channel and for the rest of the way the extreme right hand channel, thus dividing jurisdiction over the islands between the states in that way. Thereafter the Michigan enabling act was passed. The larger islands were surveyed and platted as belonging to Wisconsin, but there were numerous small islands in the area which were never surveyed, nor platted, and as to which there were no specific or definite acts of dominion exercised by either state. The court held that this evidence showed acts of jurisdiction and sovereignty by Wisconsin over the disputed territory and Michigan's acquiescence therein, sufficient to support the contention of Wisconsin.

In the Green Bay section the boundary was described as being "the center of the most usual ship channel." There were two distinct ship channels and the question for determination was which of these two channels was meant. The court decided that Wisconsin had exercised dominion and sovereignty over the

islands in the disputed territory, that Michigan had acquiesced therein, and, therefore, the claim of Wisconsin was supported.

With reference to the evidence showing acts of dominion and sovereignty by Wisconsin and acquiescence therein by Michigan, the court said the following:

> "The evidence in respect of the other group of islands, while perhaps not so complete, is definite and clear to the same effect. The taxation of lands on Chambers Island began while Wisconsin was still a territory. In 1861, voters on that island participated in a Wisconsin election. A history of Door county, introduced by complainant, recites that the island constituted an organized town forming a part of Door county, Wisconsin, as early as 1867. Evidence of early and continued recognition and treatment of the island as a part of Wisconsin by the United States through its surveys, etc., is to the same effect as that in respect of the other group. And the evidence is likewise the same in respect of the uniform appearance of Chambers Island and the other small islands of the group upon the old maps as a part of Wisconsin, and their absence from Michigan surveys and maps. The absence of evidence of specific acts of dominion over the Strawberry and the other small islands of this group is easily understood and does not affect the result. They are of little consequence, lying well within the boundary as claimed by Wisconsin, easterly from Chambers island and near the westerly shore of the Door county peninsula. They appear on all maps as, and have never been regarded or treated otherwise than, a part of Door county. It is impossible to give them a status differing from that of the larger island and the peninsula, between and within the shadows of which they lie.
>
> "That Wisconsin since statehood has continuously asserted title and has exercised complete and

> exclusive dominion over all the islands of both groups is really not a serious issue. Indeed, the bill of complaint avers that Wisconsin had possessed herself of, and exercised sovereignty over, the islands, including Washington, Plum, the Strawberries, and numerous other valuable islands, and has excluded and continues to exclude the state of Michigan from her rights thereto; and, more particularly, that 'Wisconsin has for many years disregarded the true and rightful boundary . . . . and has for a long time past possessed and does now possess, and has asserted and does now assert, civil, criminal and political jurisdiction over those portions of the territory within the Michigan boundaries above described as the Montreal river section, the Menominee river section, and Green Bay section of the disputed territory aggregating approximately 255,000 acres, ... and has unlawfully taxed and still continues to unlawfully tax said property, ...' The explanation relied upon is that the state of Michigan, as a result of her excusable ignorance, has not been aware of the real facts and, therefore, should not be held to have lost rights by long acquiescence which she otherwise might have had. This view cannot be accepted and may be dismissed with a reference to what we have already said as to the same defense in respect of the Montreal river section."

In the case of New Mexico vs. Texas, 275 U. S. 281, 72 L. Ed. 280, suit was brought by New Mexico against Texas to establish a part of their common boundary in the valley of the Rio Grande River. The allegation was made in the bill, and it was admitted in the answer, that the channel of the Rio Grande as it existed in 1850, was and is the true boundary between the states. The testimony for the complainant showed the Rio Grande river to have been located in the year 1850 in one place, while the testimony for the State of Texas showed it to be located in another place. In the year

1859, John H. Clark, United States Commissioner, made a survey of a portion of the boundary line between Texas and the territories of the United States. In the year 1911, commissioners were appointed to re-establish the Clark survey. According to this survey, as re-established, the river bank of the Rio Grande of the year 1859, was substantially in the position claimed by Texas. Texas also introduced in evidence various old surveys, patents and maps which showed the river to be substantially in the position claimed by them. The court in deciding the finding of the Commissioner that the location of the river in 1859 was substantially as claimed by Texas to be correct, said the following:

> "He further found that for many years prior to the admission of New Mexico as a state in 1912, surveys were made by Texas surveyors and patents issued by Texas on substantially all the land in the area in dispute; that the occupancy and physical possession of this land by Texas patentees and persons claiming under them, had been admitted by counsel at the hearing before him; that there was no evidence that from 1850 to 1911 the United States had issued any patents specifically covering lands east of the river as located by the Salazar-Diaz survey, or conflicting with any of the patents issued by Texas; and that, for at least thirty years prior to the admission of the Territory of New Mexico as a state, the United States made no challenges of the claims to lands asserted by Texas and its citizens, and, impliedly at least, recognized the practical line that had been established as the boundary between the territory and Texas.
>
> * * * *
>
> "Upon the whole case we are satisfied that the master's finding as to the location of the river in 1850 is substantially correct, and fixes its course as accurately as is possible after the lapse of more than three quarters of a century. Without attempting to set out our reasons in detail, we con-

clude: That the testimony of the witnesses as to their recollection of the old river is far from satisfactory, and does not in view of the other evidence in the case, sustain the burden of proof resting upon New Mexico; that the greater weight of the evidence shows that Clark's monument No. 1 did not coincide with station 1, but was located at least 2783 feet west thereof, substantially as re-established by the Scott-Cockrell Commission; that under the Joint Resolution of February, and August, 1911, preceding and conditioning the admission of New Mexico as a state, it is bound by the re-establishment of the monument by the commission and cannot question its accuracy; that this necessarily extends the Clark boundary line along the 32d. parallel to the east bank of the river, at a point 600 feet west of the re-established monument; that, according to the greater weight of the evidence, the river in 1850, or as near thereto as may now be determined, ran southwardly through the valley from the parallel, as shown by certain of the surveys, patents and maps relied on by Texas—especially the Salazar-Diaz survey of 1852, the Texas surveys of 1849 and 1860, the maps of the surveys made in 1852—1855, for the Joint Boundary Commission, and the Clark map of 1859—on the course and in the location set forth and described in the master's report; and that this conclusion is reinforced by the tacit and long-continued acquiescence of the United States, while New Mexico was a territory, in the claims of those holding the land in controversy under Texas surveys and patents, and the undisturbed possession of the Texas claimants. In short, we find New Mexico has failed to sustain the burden of proof, and that the master's report is in accord with the greater weight of the evidence."

CONCLUSION

From the foregoing authorities, it is evident that it is not necessary, in order for the legal principle here involved to be applicable that there be actual physical possession or occupation of the disputed territory, but that if one state exercises acts of dominion, sovereignty and control over the disputed territory, and the other state acquiesces therein, then this is conclusive as between the two. As to what is necessary to show the actual exercise of acts of dominion, sovereignty, or control over the territory by one state and acquiescence therein by the other is a matter to be determined from the facts in each particular case, giving due regard to the physical characteristics of the territory in dispute.

In this case, therefore, it is respectfully submitted that the record conclusively shows that the defendant State of Mississippi has exercised all such acts of sovereignty, dominion and control over the territory in question as were susceptible of being exercised by it over that particular territory and that complainant State of Louisiana by its acquiescence therein is now barred from making any claim thereto.

Respectfully submitted,

RUSH H. KNOX,
Attorney General of Mississippi.

RUFUS CREEKMORE,
PAT HENRY,
ELMER C. SHARP,
HIRAM H. CREEKMORE,
Solicitors for State of Mississippi.

We hereby certify that we have this day mailed, postage prepaid, a copy of the foregoing REPLY TO SUPPLEMENTAL BRIEF to Hon. Percy Saint, At-

torney of the State of Louisiana, Messrs. Dale, Dale and Dale, Attorneys-at-Law, Vidalia, Louisiana, and Messrs. Brandon and Brandon, Attorneys-at-Law, Natchez, Mississippi.

This the 23 day of March, 1929.

RUSH H. KNOX,
Attorney General of Mississippi,
RUFUS CREEKMORE,
PAT HENRY,
ELMER C. SHARP,
HIRAM H. CREEKMORE,
Solicitors for the State of Mississippi.

APPENDIX

GENERAL PROPERTY TAX, RATE OF TAXATION, ASSESSMENT, COLLECTION, ETC.

Act 170 of 1898, p. 346.

TITLE.

AN ACT to provide an annual revenue for the State of Louisiana by the levying of annual taxes upon all property not exempted from taxation and by prescribing the method of assessing and collecting the same, and of enforcing payment thereof in the several parishes of the State and setting forth the purposes for which said levy is made.

Rate of State Tax Fixed at 6¼ Mills

Section 1. (As amended by Act 281, 1914, p. 562.) Be it enacted by the General Assembly of the State of Louisiana, That for the calendar year A. D., 1914, One thousand nine hundred and fourteen, and for each

succeeding calendar year, there are hereby levied annual taxes amounting in the aggregate to six and one-fourth (6¼) mills on the dollar of the assessed valuation of all property situated within the State of Louisiana, except such as is expressly exempted from taxation by law, and the term property as herein used means and includes all real estate, with the buildings and all other improvements thereon, or thereto attached, and all other untaxed land, etc.

Duties of Assessors in Relation to the Assessment of Property

Section 7. Be it further enacted, etc., That it is made the duty of the tax assessors throughout the State to place upon the assessment list all property subject to taxation, including merchandise or stock in trade on hand at the date of listing, within their respective districts or parishes; and if any tax assessor shall intentionally or knowingly or through gross negligence omit any taxable property from the assessment list, or permit the same to be omitted therefrom, he and his sureties in solido shall be liable on his official bond for the full amount of the taxes due on the property so omitted from the list, etc.

Assessment of Land

Section 8. Be it further enacted, etc., That if the land to be assesed be a tract or a lot known by name or if the owner's name be known, it shall be designated by those particulars and by its boundaries; if it has no name or the name be unknown, it shall be designated by its boundaries, or by divisions, pursuant to the United States surveys, etc.

Examination of Records

Section 10. Be it further enacted, etc., That each tax Assessor, parish of Orleans excepted, on and after the first day of January of each year, shall diligently examine the records in the offices of mortgages and conveyances and abstracts of land entries, and compare the names of the parties assessed and the descrip-

tion of the property, giving the exact lines and measurements as so recorded in the conveyance office and the abstract of land entries, and shall otherwise make faithful inquiry and investigation to ascertain what taxable property in his district or parish belongs to residents and to absent owners, and to unknown owners; and he shall make a separate list describing each tract of land and other items of taxable property belonging to any absent owner whose name is unknown, and shall affix the valuation thereof in person or by sworn deputy, unless said absent owner, or his agent or attorney shall have delivered to him a correct and complete tax list containing the name and post office address of said absent owner and of his agent or attorney, on or before the first day of June, 1899, and each subsequent year, and he shall make a separate tax list describing each tract of land and other property belonging to each unknown owner; and shall affix a separate valuation to each separate tract; provided, that no assessor shall draw any salary until he makes affidavit and furnishes a certificate from the recorder of conveyances that he has made the examination required by this section.

Omission of Lands from Taxation.

Section 12. (As amended by Act 69, 1908, p. 84). Be it further enacted, etc., That if any tract or lot of land, or other property shall be omitted in the assessment of any year, or series of years, or in any way erroneously assessed, the same, when discovered, shall be assessed by the assessor, or tax collector for the whole period of which the same may have been omitted or improperly assessed and shall be subject to the State, parish, municipal and levee taxes, which have been, or may hereafter be assesesd against said property in accordance with law, etc.

Return of Lists by Taxpayer

Section 14. Be it further enacted, etc., That it shall be the duty of each taxpayer, parish of Orleans excepted, to fill out a list of his property in accordance with

the form provided in section 17, of this act; and he shall make oath thereto before the tax assessor, or any officer authorized by law to administer oaths, and return the same to the assessor before the first day of May of each and every year, and any refusal, neglect or failure from any cause whatsoever, to comply with this provision of this act, shall act as estopping the taxpayer from contesting the correctness of the assessment list filed by the assessor.

Oath of Taxpayer

Section 15. Be it further enacted, etc., That on the back of each of said tax lists there shall be printed in substance the following form of oath or affirmation, to-wit: "I, whose postoffice is....., do solemnly swear (or affirm) that the list on the reverse side of this paper which I have signed, is a correct and complete list of all the property of which I am owner or have in my possession, or under my control, in the capacity set forth in said list, situated in the parish of .....; of every kind, character and description, which is subject to taxation under the Constitution of the State of Louisiana, and under Section 1, of the act of the General Assembly, entitled an act to provide an annual revenue and taxation for the State of Louisiana, etc., and adopted at the regular session of 1898, which section is printed in full in this page; and further, that the number of acres of land has been stated and that the valuation placed thereon by me is true and correct to the best of my knowledge and judgment, and I have given the proper description of said lands and all other taxable property as the law requires, so help me God. Sworn to and subscribed before me this.....day of....., A. D., ..."

Assessors to Personally Visit Taxpayers

Section 16. Be it further enacted, etc., That the said assessor shall in person, or by duly authorized deputy, visit the domicile, residence, or office, of each person, company, firm, corporation, bank, exchange or association of two or more individuals and shall fill out with

the name and postoffice address the said list as provided for in this act which each person who owns, possesses or controls any taxable property in his own right, shall sign and swear to, and a separate list shall be filled out with the name and post office, and shall be signed and sworn to by each person, in each separate capacity in which he may possess taxable property, such as cashier, president, treasurer, secretary, liquidator, master superintendent, manager, sequestrator, receiver, keeper, curator, tutor, agent usufructuary, and every other representative or official capacity.

Preparation of List.

Section 19. Bt it further enacted, etc., That the Tax assessors shall fill up the column for valuation with such valuation of each item of property as he considers just; whenever he does not agree with the valuation as fixed by the taxpayer, and if any person shall fail or refuse to sign one of the said tax lists within the time prescribed in Section 14, of this act, the tax assessor shall obtain his name, ward and postoffice address, and in cities and towns, street, number and postoffice address, and a full description and valuation of all the property of said person in whatever way he can, and shall himself fill out said list from the best information he can obtain, and shall fill up the column with his own valuations; and to that end he is authorized to administer oaths and propound questions to any person whom he supposes can give information in relation thereto. In making all assessments it shall be the duty of the assessor to describe all property according to such a description as will reasonably identify the property assessed and to assess the same in the name of the owner, except in the case of unknown owners, and it is hereby made his special duty to examine into assessments that have been carried over on the rolls from year to year without having been given in by the owners, and to that end he shall make all necessary inquiries as to the facts from any and all sources, and as to the law from the district

attorney, whose duty it is to advise him in all such cases.

Assessment at Cash Value

Section 20. Be it further enacted, etc., That all real estate and personal property subject to taxation, as enumerated by Section 1 of this act, and not exempt by law, shall be estimated by the assessors of the several parishes of the State, parish of Orleans excepted, at its actual cash value upon the blank lists furnished by the Auditor of Public Accounts, in accordance with this act; and in case the valuation so made by the said assessors are, in the opinion and belief of the taxpayer, in excess of and beyond the cash value of the personal or real property, the said assessor shall make or cause to be made a duplicate list of said property, and shall then and there administer to the said taxpayer the oath or affirmation as follows, viz: "I swear, or affirm, that the valuation affixed opposite each item of property in the foregoing list is the actual cash value thereof, according to the best of my knowledge, judgment and belief, so help me God. Sworn to and subscribed before me this.....day of..... A. F. 18....." The assessor shall subscribe such duplicate lists and submit them to the board of reviewers as hereinafter provided for.

FILE COPY

MAY 2 1930

IN THE

Supreme Court of the United States

October Term, 1928.

Number [redacted] Original. 86

In Equity.

THE STATE OF LOUISIANA,

Complainant,

vs.

THE STATE OF MISSISSIPPI,

Defendant.

REPORT OF SPECIAL MASTER.

IN THE

Supreme Court of the United States

October Term, 1928.

Number 9, Original.
In Equity.

THE STATE OF LOUISIANA,
Complainant,

vs.

THE STATE OF MISSISSIPPI,
Defendant.

REPORT OF SPECIAL MASTER.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The report of Thomas G. Haight, as Special Master in the above entitled cause, respectfully shows as follows:

By order entered herein at the October Term, 1928, this case was referred to me, as Special Master, with direction and authority to report the same to this Court with my findings of fact, my conclusions of law and my recommendations for a decree herein.

Pursuant to said order, counsel for the respective parties appeared before me at New Orleans, and there entered into a stipulation correcting certain testimony

theretofore taken, and covering such additional evidence and exhibits as they desired to introduce. At that time and place counsel submitted to me the testimony theretofore taken, together with their briefs, and argued the case orally.

All the testimony in the case was taken by a Commissioner before the reference was made to me. Therefore, I did not have the advantage of seeing the witnesses, hearing their testimony and noting its application when and as given to the numerous exhibits in evidence. This has made much more difficult the examination, analysis and interpretation of the testimony and exhibits, and reaching conclusions therefrom. Some of the testimony is apparently irreconcilable but a close analysis of it all leaves no reasonable doubt as to the ultimate facts. There are no disputed questions of law, although the applicability of one settled rule of law to the situation, as outlined by the evidence, is in controversy. For the convenience of the Court, I have recited the testimony both documentary and oral quite in detail.

Nature of Suit and Contentions of the Parties.

This suit is brought to locate and establish by the decree of this Court, that part of the boundary line between the States of Louisiana and Mississippi which separates Willow Point and adjacent premises in Louisiana from Township 9 North, Range 8 West in Mississippi.

Surveys made by the Mississippi River Commission in 1823 and 1824 are accepted as correctly locating the river and the shoreline of the State at the date of these surveys respectively.

The parties agree that the middle line of the navigable channel of the river at the respective dates of these surveys was then the true boundary line, and that at these dates the territory now in dispute was within the boundaries of Mississippi.

In 1823-24 the premises in controversy were known as Tullos (or Tulles) Island, and certain parts of the Mississippi mainland adjacent thereto. Prior to 1882, this island was renamed "Island No. 98". The bend in the river at the place in question is known as Albemarle Bend.

The State of Louisiana contends:

1. That between the dates of the surveys made by the Mississippi River Commission in 1823 and 1824 and the survey made by the Commission in 1912 and 1913, erosions took place on the Mississippi shore of the river and accretions attached to the Louisiana shore; that thereby the location of the river, and hence of the boundary line, was gradually and imperceptibly moved in an easterly and northeasterly direction a distance of five or six miles, and that these accretions to the Louisiana shore became Louisiana territory.

2. That in 1912-1913 the river suddenly changed its course, cut across the bar formed by the accretions to the Louisiana shore, and thereby the navigable channel of the river was suddenly changed to the location shown by the survey made in 1912-13 (Complainant's Exhibit F); but that this change, being by avulsion, the boundary line remained and now is where the extreme northeasterly and easterly mid-channel of the river around the Albermarle Bend was prior to the avulsion.

The State of Mississippi disputes complainant's contentions and claims:

1. That the burden is on the complainant to prove that the Mississippi River gradually moved northeasterly and easterly from its 1823 channel to its 1882 channel, and that the Louisiana shoreline progressively followed it by accretions; that Louisiana has failed to bear this burden, and by reason thereof it has failed to show title to accretions which admittedly attached to the westerly shore of the river subsequent to 1882.

2. That subsequent to 1882 the river above and to the west of Willow Point cut into the Louisiana shore and thereby deflected the current from a southeasterly to a northeasterly direction; that the river, thus deflected, cut around the head and to the north and east of what was then left of Tullos Island, enlarged what is known as the "chute" between that Island and the Mississippi mainland, making a new channel there; that the old bed of the river to the west of Tullos Island filled up, and thereby that island became attached to the Louisiana shore; that the river continued to cave the Mississippi shore east of Tullos Island and added to that Island by accretions until 1912-1913, when it suddenly abandoned its new channel and returned to the old 1882 channel, and thereby what theretofore had been Tullos Island again became an island, but greatly enlarged by accretions thereto.

3. If defeated in these contentions, Mississippi claims that its title to the disputed territory has become unassailable by reason of its long continued possession of, and its exercise of sovereignty and dominion over the same, with acquiescence therein by Louisiana.

The claim of Mississippi is that all territory east of the mid-channel of the river, as shown by the 1823 survey, is Mississippi territory. Failing in that contention, defendant claims that complainant has failed to prove that the change in the river channel between 1882 and 1894 was due to erosion on the Mississippi shore and accretions to the Louisiana shore, and not by avulsion, and hence the boundary line between the States should be decreed to be the middle of the navigable channel as it existed in 1882.

It is undisputed that between 1823 and 1913 the location of the Mississippi River at the place in question had changed from that shown by the surveys in 1823 and 1824 to a location five or six miles northeasterly and easterly therefrom, the latter location being shown by a survey of the Mississippi River Commission made in 1912-1913 (Complainant's Exhibit F; Defendant's Exhibit 6-D). That survey shows the channel of the river both before and after the cut-off of those years.

Was this change of the river channel to its extreme northeasterly and easterly position produced gradually by erosions on the Mississippi shore and accretions to the Louisiana shore, or was it, or some part of it, due to one or more avulsions? If produced by erosions on the Mississippi shore and accretions to the Louisiana shore, the disputed territory clearly belongs to Louisiana. But to the extent, if any, that this change was the result of avulsions, the true boundary line was not thereby altered. *Iowa* v. *Nebraska,* 143 U. S. 359; *Arkansas* v. *Tennessee,* 246 U. S. 158; *Oklahoma* v. *Texas,* 260 U. S. 606. On these propositions the parties are in agreement.

Analysis of the Evidence.

No witness was produced by either side who could testify from personal observation with respect to the location of the river at any time between 1824 and 1876.

Defendant first directs attention to testimony with respect to a depression called by some of the witnesses "St. Francis Chute", said to be located a little easterly of the position of the river channel in 1824. It is claimed that this testimony shows that both banks of the channel as it existed in 1824 are now discernible, and from this it is argued that the movement of the river toward the east must have been produced by avulsion and not by erosion and accretion.

An examination of this depression as it appears on the maps referred to by defendant on page 19 of its original brief (being Complainant's Exhibit M and Exhibit F; Charts 46 and 47, Mississippi River Commission surveys), shows that it corresponds very closely as to location, direction and width to the depression shown on Complainant's Exhibit H attached to the bill of complaint, located between the Louisiana mainland and what is there designated as "High Bar". By scaling the distance on these maps, it is found that at the north end of the "High Bar" the distance from the westerly line of this depression to the Louisiana bank line of 1824 is about 1300 feet; that at the point where this depression is crossed by parallel 32° 36′ north latitude, its westerly line is about 2400 feet from the Louisiana bank line of 1824, and that at a point opposite the southerly end of Tullos Island as it existed in 1823, its westerly line is nearly seven-eighths of a mile from the Louisiana bank line of 1824. That high ground should exist on both sides

of this depression located as it is between what had been a bar and the mainland, is quite natural.

The argument that this depression is the old 1824 channel is, therefore, not persuasive.

Complainant's Exhibit G to the bill of complaint is a blue print made by Captain C. H. West, a Civil Engineer in active practice for 42 years, and a member of the Mississippi River Commission since 1910. On this blue print Captain West had combined and correlated on one sheet the 1823 survey of the Mississippi River Commission of a part of Township 9 N, Range 8 W, Issaquena County, Mississippi, and the survey of 1824 of that Commission of a part of Township 19 N, Ranges 14 and 13 E, Parish of East Carroll, Louisiana; also the Louisiana and Mississippi bank lines of the river at the date of these surveys respectively. By broken lines he shows the Louisiana bank line of the river in 1866.

It is not disputed that Complainant's Exhibit G shows correctly the Mississippi River Commission's Survey of both the Mississippi and Louisiana territory in question, and the respective bank lines of those states at the respective dates when these surveys were made; or that this exhibit shows the correct relation of these two surveys to each other.

The location of the Louisiana bank line in 1866 as shown on this blue print was at first questioned (defendant's original brief, p. 20). But by stipulation of January, 1929, a blue print of the 1866 survey of the Louisiana bank line was stipulated in evidence. By the same stipulation, two other blue prints were put in evidence; (1) a map showing the changes in the river bank and levee lines along the front of Illawanna and Villa Vista plantations in Louisiana from 1824 to 1899; and

(2) a map of Alsatia, Salem, Villa Vista and Mascot Bend. Both these blue prints show the location of the Louisiana bank line in 1866 in front of the location in question, and for a considerable distance on each side thereof.

These three blue prints, together with Complainant's Exhibit G show that beginning near the northeasterly corner of Willow Point, the Louisiana bank line of 1866 had moved easterly from the 1824 bank line to a point near its intersection with parallel 32° 36′ north latitude (opposite Section 6 on Exhibit G) where it attained its maximum easterly position, and from that point southerly it approached the bank line of 1824 down to a point slightly below parallel 32° 35′ north latitude, where it intersected the bank line of 1824. By scaling the distance between the bank lines of 1824 and 1866, it is found that at the point of maximum separation of these lines, the 1866 bank line was approximately 439 yards easterly of the 1824 bank line. This extension of the bank line towards the east is much less than the admitted width of the river in this location. This precludes the idea that the change in the position of the river between 1824 and 1866 was produced by avulsion.

The survey next in order of time is that of Hopkins Island (Complainant's Exhibit BB to the bill of complaint), made in 1869-70 by Robert Boyd, U. S. Government Surveyor, pursuant to contract and under instructions of the Surveyor General of Louisiana. This survey shows the relation of that island to Louisiana and the location of the adjacent Louisiana bank line as it then existed. The location of Hopkins Island in 1870 and of the Louisiana bank line in that vicinity at that time is sketched in broken lines on Exhibit H to complainant's

bill. The bank line thus located coincides with the bank line of 1866 at about the middle of Section 4 of Township 19 N, Range 14 E, Louisiana territory, but from that point it diverges easterly to a point about opposite the dividing line between Sections 6 and 7, thence it extends in a southwesterly direction until it coincides with the Louisiana "high bank line", as afterwards located by the survey of 1882, at a point about opposite the dividing line between Sections 7 and 8. Thence it follows that "high bank line" to the southerly side of Section 9, where it again coincides with the 1866 bank line.

Scaling on the map the divergence easterly of the 1869-70 bank line from that of 1866, it is found that the distance between these two lines varies from zero to a maximum of about 1099 yards, the maximum divergence being opposite Sections 7 and 8. This maximum divergence is little, if any, more than the average width of the river (see computation, pp. 10 and 11 of complainant's first supplemental brief). Defendant does not dispute the correctness of this computation in its reply brief.

This evidence again clearly indicates that up to 1870 the change in the location of the river was not by avulsion but by erosion and accretion.

The next survey in evidence is that made by the Mississippi River Commission in 1879-80 with river soundings taken in 1882. It is usually designated as the 1882 survey. This survey, so far as it relates to this controversy, is shown by the Commission's Charts 45 and 46 (Complainant's Exhibits EE and EEE; Defendant's Exhibits 6-C and 6-D).

Complainant's witness, Captain West, has platted these two charts on one sheet and has superimposed

thereon Complainant's Exhibit G, thereby showing the relation of the 1823 and 1824 surveys to the 1882 survey. This combination of these three surveys was introduced in evidence as Complainant's Exhibit M.

Complainant's Exhibit H also shows the river banks and bar lines of the 1882 survey and their relations to the Louisiana bank lines of the 1866 and 1869-70 surveys. This exhibit shows that the Louisiana "high bank line" of the 1882 survey coincides with its bank line of 1866 from about the middle of Section 4 of Township 19 N, Range 14 East to the middle of Section 6. At that point it diverges towards the east to about the middle of Section 8 when it again approaches the bank line of 1866 and coincides with it at about the southerly line of Section 9.

The Louisiana "bank line" of the 1882 survey as distinguished from its "high bank line" (Complainant's Exhibit H) coincides with its bank lines of 1866 and 1869-70 at about the middle of Section 4 and then diverges sharply toward the east to a maximum divergence of about three quarters of a mile opposite Section 7. From that point it approaches the "high bank line" of 1882 and coincides with it at about the southerly line of Section 9. The relative positions of the bank lines and bar lines of 1866, 1869-70 and 1882 are shown on Complainant's Exhibit H. Defendant does not dispute that the Louisiana bank and bar lines of the 1866, 1869-70 and 1882 surveys are correctly located on Complainant's Exhibit H.

The difference computed in yards between the Louisiana bank line of 1869-70 and that of 1882 at various points is shown on pages 10 and 11 of complainant's first supplemental brief. The distance between these two lines is shown to vary from zero in front of Section 4 to about

1245 yards opposite the dividing line between Sections 7 and 8. From that point southerly these lines converge until they intersect near the southerly line of Section 9. Defendant does not dispute the correctness of these computations.

The 1882 survey of the Mississippi River Commission shows the "high bar" adjacent to the Louisiana shore shown on Complainant's Exhibit H, but gives it no name. Chart 46 of the 1882 survey (Complainant's Exhibits EEE and M; Defendant's Exhibit 6-D) shows that this bar had an elevation of 100 feet and cottonwood trees were growing thereon. Tullos Island, or Island No. 98, is shown greatly reduced in size, both in length and width. When that survey was made (1879-80) that part of the island which was in existence in 1823 tapered to a point at the southerly end and almost to a point at the northerly end, being but a narrow crescent located partly in Section 21 and partly in Section 28 (see Complainant's Exhibit M). All that part of the original island located in Sections 20, 29 and 30 had disappeared, as had also a considerable portion of the part located in Sections 21 and 28.

The 1882 survey shows that at the date of that survey the Louisiana bank line had moved easterly and intersected the Mississippi bank line of 1823 in Section 20 (Tullos Island) and that its most easterly point extended nearly to the easterly line of Section 29. From that point it turned sharply to the southwest, crossed the southerly line of Section 29 at about the middle point, intersected the Mississippi mainland of 1823 at the northwest corner of Section 32 and continued across Section 31. Accretions attached to the Louisiana shore covered the southwest corner of Section 20, a large part of Section

29 and all of Section 30 within the boundaries of Tullos Island as it existed in 1823, and also portions of Sections 31 and 32 on the Mississippi mainland of 1823.

Northeasterly of the remnant of Island No. 98 which remained in 1882, a bar had formed extending northwesterly along the Mississippi mainland from which, and from the remnant of Island 98, it was separated by a chute. The southwesterly portion of this bar had an elevation of 100 feet, and willow and cottonwood trees were growing thereon.

On Complainant's Exhibit H the middle of the channel of the river in 1882 is shown as passing through Section 20, the extreme northeasterly and southeasterly corners of Section 29, and for a short distance just within the westerly edge of Section 28, on what had been Island 98, and through Sections 31 and 32 on the Mississippi mainland. The easterly bar line of the river is shown along the easterly shore of what was Hopkins Island, all or practically all of which had disappeared.

In 1882 the deep part of the current was along the bar lying northwest of Island 98 and along the westerly side of the remnant of that island. Charts 45 and 46 of the Mississippi River Commission surveys show that the westerly side of that bar and the southwesterly side of Island No. 98 were then caving.

It is admitted that in 1882 the river had changed its channel to the eastward and that at a point in front of Section 7, Louisiana territory, it was about 1½ miles easterly from the 1824 channel. (See defendant's original brief, p. 12.)

The contour lines on the bar attached to the Louisiana shore show a regular descent from an elevation of 100 feet at the "high bar" and the Louisiana mainland, to the river channel.

Therefore, without regard to the oral testimony to be hereinafter referred to, I have no difficulty in reaching the conclusion from the documentary evidence that up to 1882 the change in the location of the river and of the boundary line had been produced by erosions and accretions, not by avulsions.

The next general survey of the river and adjacent banks in the location of the disputed territory is known as the 1894 survey of the Mississippi River Commission. This was a low water hydrographic survey. Elevations were taken of the lands between the river banks and soundings were taken in the channel. This survey, with land elevations between the river banks, river soundings and certain other data, was platted on work sheets kept in the office of the Commission, but these sheets were not published.

The Commission platted the bank and bar lines of the 1894 survey in light red lines, on the 1882 survey, the bank lines being solid and the bar lines broken. The map of the 1882 survey, with the bank and bar lines of the 1894 survey in red superimposed thereon, but without elevations or soundings, was republished by the Mississippi River Commission in 1900 as the second edition of the 1882 survey. An original of this second edition is annexed to complainant's bill marked Complainant's Exhibit C.

On Complainant's Exhibit C the 1894 bank line of Louisiana does not differ substantially from its bank line as shown on the 1882 survey. The bar line, however, separates from its 1882 bar line at the northeasterly corner of Willow Point and extends thence northeasterly across the river channel of 1882 to the Mississippi mainland of

that year; thence in a wide curve it crosses what in 1882 was the northwesterly portion of the then remnant of Island 98, thence to and through what was the river channel in 1882 to a point near Henderson Landing where it intersects the Louisiana bank line of 1894.

The Mississippi bank line and bar lines of 1894 meet on the Mississippi mainland northeast of Willow Point just east of meridian 91° 03′ west longitude, and from that point its bank line extends practically parallel with the Louisiana bar line, but wholly within the Mississippi mainland, to and beyond a point opposite Henderson Landing at the southerly end of Albemarle Bend.

The location of the 1894 bank and bar lines of both states as platted on the 1882 survey, clearly indicates—

(1) That by erosion, all of the remnant of Island 98 as it existed in 1882 had disappeared and that the Mississippi mainland had been cut away to its 1894 bank line.

(2) The Louisiana bank line being in substantially the same location as its 1882 bank line, there was no avulsion between 1882 and 1894.

(3) That by accretions the bar attached to the Louisiana shore had extended northeasterly and easterly to its 1894 bar line, and thereby it had covered all that part of what was formerly Mississippi territory lying westerly of said bar line. The territory so covered was a large portion of the 1882 channel of the river from the northeasterly corner of Willow Point to Henderson Landing; about one-half of the bar northwest of Island 98 as shown on the 1882 survey; a strip of Mississippi mainland adjacent to said bar; all of Tullos Island as it existed in 1823, except that part thereof lying easterly of the Louisiana bar line in the channel of the river; nearly all of Section

31 and parts of Sections 16, 17, 18, 21, 28 and 32 on the Mississippi mainland.

(4) That nearly all of the bar adjacent to the Mississippi mainland in 1882 and all of Island 98 not covered by the extension of the Louisiana bar, were within the main channel of the river; that the main channel of the river from meridian 91° 03′ west longitude to the southerly end of the Albemarle Bend was wholly or partially within what had been the Mississippi mainland.

The bank and bar lines of the 1894 survey having been platted on the 1882 map by the Mississippi River Commission, it is assumed they were correctly located. Defendant's contention, however, is that Island 98 never wholly washed away and that the change in the location of the river between 1882 and 1894 was due to avulsion, by which the river went northerly around the head of Island 98 and cut out the new channel of 1894 to the east of that island, and that the accretions due to erosions of the Mississippi mainland attached to the easterly side of the remnant of Island 98, which it claims was Mississippi territory.

In support of its contention, defendant introduced its Exhibits 4 A-B-C, being blue prints of the Mississippi River Commission's work sheets of the 1894 survey, with bank elevations and river soundings shown thereon. From elevations and the locations of trees shown on these blue prints, and the testimony of defendant's witness Marshall with respect thereto, it is argued that it is impossible that Island 98 was wholly washed away prior to the survey of 1894; and since the 1894 survey shows the main channel of the river east of the location of Island 98, it is argued that the change in the location of the river

between 1882 and 1894 must have been due to avulsion. But the 1894 survey does not show that the main channel of the river was east of Island 98. On the contrary, it shows that all of that island as it existed in 1882, except the small wedge on the northwesterly side, was within the 1894 main channel, and that the small wedge on the northwesterly side was west of the Louisiana bar line, and apparently covered by accretions attached to the Louisiana shore. Furthermore, all of the evidence shows that at this point the river has always cut into its easterly bank. Consequently, the disappearance of Island 98 could not have been due to any erosion on its easterly side.

Captain Marshall testified that on the upper right-hand corner of Defendant's Exhibit 4-A an elevation of 110 feet is shown; that around this high ground the timber line is drawn; that this location is the northerly end of Tullos Island (R., p. 172); that to his personal knowledge Tullos Island was not wholly washed away in 1890 and that it would be impossible that the Island should be wholly washed away and in four years thereafter be built back "with big trees growing on it" as shown by the 1894 survey (R., pp. 175-176). But the high ground in question is not clearly shown to be within the original limits of Tullos Island; still less is it shown to be within the area of that isand as shown on the 1882 survey.

By scaling the distance on Exhibit 4-A, the high ground in question appears to be located about 800 feet north of parallel 32° 37′ north latitude. In 1823 Tullos Island extended about 500 feet north of parallel 32° 37′ north latitude but in 1882 its northernmost point was about 1000 feet farther south than in 1823.

On this high ground on Defendant's Exhibit 4-A the word "willows" appears. No other trees are noted anywhere in that vicinity. The size of this growth is not stated. Captain Marshall nowhere explains what he means by "big trees", nor does he state definitely where those big trees were located, or what kind they were.

North of the middle of Tullos Island as it is shown on the 1882 survey is the word "gum"; near the middle of the island is the word "hackberry"; and near the southerly end is the word "cottonwood", indicating that trees of the kinds named were then growing in those locations. I find no such notations on Defendant's Exhibits 4-A-B-C (the work sheets of the 1894 survey) in the location occupied by Tullos Island in 1882. This indicates the absence there of such trees in 1894. Had any part of Island 98 existed in 1894, undoubtedly gum, hackberry and cottonwood trees, or at least some of them, would have been found thereon. Their absence strongly supports the contention that prior to 1894 Island 98 had wholly disappeared.

Captain Marshall points out two islands shown on Defendant's Exhibit 3 (Sheet 17 of the Mississippi River Commission's Survey of 1882, being the same as Complainant's Exhibit C without the red lines of the 1894 survey shown on the latter exhibit). The witness does not specifically state that these two islands are parts of the original Tullos Island. His testimony on this point is not clear but it may be inferred that he intended to say that in 1882 Tullos Island was divided by a chute into two parts, Upper Tullos and Lower Tullos (R., pp. 171-175-178). Defendant's counsel contends that this was the fact (defendant's original brief, p. 24; p. 59). No map is produced to support this contention. All Government maps show but one Tullos Island, or Island 98, as

it was later called. Although this island is shown in 1882 as greatly reduced in size, it is still called Island 98. What defendant calls "Upper Tullos" appears to be the bar formed adjacent to the Mississippi shore northwest of Island 98, and extending far to the northwest. This bar is not given a name on any of the maps in evidence. Had the engineers of the Mississippi River Commission found the island was thus divided, they would undoubtedly have so indicated on their charts.

The evidence is insufficient to support the contention that Island 98 was ever divided into two parts.

Nor does Defendant's Exhibit D-5—a blue print of the Mississippi River District Map of Albemarle Bend, made by C. H. West, Chief Engineer, dated April 5, 1906—furnish any support for defendant's case. This map purports to show the location of the river channel from 1882 to 1906. Since it shows the channel in 1882 it necessarily shows bank and bar lines and adjacent lands as they existed in 1882, including Island 98, and the bar or island northwesterly thereof then adjacent to the Mississippi shore. This does not imply that either existed in 1894. This map in no way contradicts the evidence to be gleaned from the charts of the surveys of 1882 and 1894, nor does it indicate that the channel of the river was moved other than by erosions on the Mississippi bank and accretions to the Louisiana bank.

With respect to the changes in the location of the river between 1882 and 1894 defendant predicates its defence principally upon the theory that Island 98 never wholly washed away.

The testimony with respect to the total disappearance of Island 98 prior to 1894 is very conflicting and difficult, if not impossible, to reconcile.

Walter A. Newman owned Willow Point up to the time of his death. The title then appears to have vested in his widow and children. They held the title until 1907.

T. B. Beard testified on behalf of complainant that he had known Willow Point for about fifty years; that Walter A. Newman married his sister, and he frequently visited her at Willow Point and went around the bar with his brother-in-law and later with his nephews, Ernest and George Newman; that he had known the place since 1876 when he was ten years of age; he had never seen any island in the river between Willow Point and the Mississippi shore, and that he believed that if islands had been there he would have seen them (R., p. 89; p. 95).

The early recollections of this witness as to conditions down to 1880 when he was quite young do not seem to have been accurate, for the survey of 1882 (made in 1879-80) clearly shows a small portion of Island 98, partially in section 21 and partially in section 28, was then in existence (Charts 45 and 46, Mississippi River Commission survey of 1882; Complainant's Exhibits EE, EEE, M and H; Defendant's Exhibits 6-C and 6-4).

Complainant's witness, Captain W. H. Reed, Sheriff and Tax Collector of Adams County, Mississippi, testified that he had been familiar with the Willow Point section since 1894; that he and his father camped at Henderson Landing south of Willow Point for a month or six weeks in 1894 (R., p. 97).

He was a deckhand on a river steamer in 1900 and then became acquainted with the river channel as a steamboat man (R., p. 102). He had been a licensed pilot and master on Mississippi steamers since 1907 or 1908 (R., p. 96). His earliest recollection of Willow Point and vicinity was in 1894 when he was 22 years of age. He

testified that there was no island in front of Willow Point prior to the cut-off of 1912, and what became an island after the 1912 cut-off was the towhead on Newman's bar or Willow Point bar (R., p. 106).

When this witness speaks of an island he refers to the island which existed after the cut-off of 1912 (R., p. 108).

He believes that from 1897 to 1912 he traversed the river at least once a year and sometimes several times a year, towing timber all up and down the river. He says that it was necessary for him to observe the shore on either side of the river as he went up and down; that Albemarle Bend was the main channel of the river from 1897 to 1912, and that between those dates there were no island between Newman Towhead and the original Mississippi mainland (R., p. 110).

The witness had heard of Tullos Island, but had never seen it and was not familiar with Island 98 (R., pp. 120-121).

Captain George Prince, a witness for complainant, testified that he had been a licensed pilot and master on the Mississippi River for thirty years; that he was acquainted with the Willow Point section and had been since 1897; that at that time he operated a towboat up and down that section of the river (R., p. 22); that from 1897 to 1914 he passed that location from six to ten times every year, and from 1914 until 1920 he had a regular run there; that during that time he had become acquainted with the conditions along the main shore (R., p. 23); that in 1897 there was no island in existence between the sand bar on Willow Point and the main shore; that the main channel of the river was then along the Mississippi shore; that there had never been an island there within his recollection, it being a clear river between

Willow Point and the Mississippi shore so far as islands were concerned (R., pp. 25-26); that at the time of the 1912 cut-off there was no island or land between the Newman Towhead and the main Mississippi shore (R., p. 28); that in 1912 the Mississippi bank was caving very rapidly (R., p. 30); that there was no Island 98 there in his time and that he never knew of such an island (R., p. 34).

Ernest Newman, called by complainant, testified that he was a son of Walter A. Newman, and was born on Willow Point plantation in November, 1888. He could remember back as far as 1897 (R., pp. 49-50). From his earliest recollection in 1897 there was no island between Willow Point and the main shore until the cut-off of 1912 (R., pp. 51-52). He said that he might have heard of Tullos Island, but has no recollection of it; that there was no island at all in the Mississippi River at that place, the first island being made there by the cutting off of a part of the Newman Bar; that there was no island along from the Mississippi shore and that he had been all the way around that shore (R., pp. 57-58).

George R. Newman, another son of Walter A. Newman, was born on Willow Point in 1886 (R., p. 64). He could remember conditions there back to about 1893 (R., p. 66). The Newman heirs sold the property about 1907 and he stayed on a year or two after his mother left (R., p. 81). He knew of no island between Willow Point and the mainland prior to the cut-off of 1912. He was well acquainted with that section and was over there off and on all the time. He testified that there was no island there, the first island there being made by the cut-off of 1912 (R., p. 69). He knew nothing of Tullos Island or Island 98 and had never heard of either. He says there was no island prior to the 1912 cut-off (R., pp. 73-74).

The Newman family claimed the Newman Towhead (R., p. 78).

E. T. Purnell, a witness for complainant, was born on February, 1866; lived at the Kiger plantation in Mississippi until 1880, when he moved to the Purnell plantation (see Complainant's Exhibit EEE; Defendant's Exhibit 6-D) directly opposite Island 98 (R., pp. 259-260). He lived there continuously from 1880 to 1897, except for a few months' interval. He had been on Island 98 "hundreds of times" (R., p. 262). He testified that the main channel of the river had always been on the west side of the island until the island washed away (R., p. 263). His earliest recollection of the island was in 1877 or 1878 (R., p. 272).

The first time he crossed to the western side of the island, probably when he was about ten years old (about 1876), the island was then caving and it continued to cave. It entirely disappeared in 1894 or 1895, during the high water of one of those years, having washed out entirely, not a vestige of it being left (R., pp. 264-265). When he noticed Island 98 was caving, the Louisiana shore was extending out each year after every freshet (R., p. 268). He testified that the island was washing gradually all the way down until 1894 or 1895, when a freshet took it all out, the last part to wash away being in front of Eustacia and Oraton Plantation (R., p. 271).

"Oraton Plantation" was the Purnell Plantation shown on Complainant's Exhibit M (R., pp. 286-287).

He further testified that he knew Hopkins Island and had been on that island, and that when he left there in 1897 there may have been a little of Hopkins Island remaining, but the main portion had caved off (R., p. 275). Hopkins Island is shown on Complainant's Ex-

hibit BB as west of the main channel of the river and is sectionized as Louisiana territory. When shown Complainant's Exhibit H to the bill of complaint, he identified the "High bar" east of the position of Hopkins Island as what he had known as Hopkins Island (R., p. 277). He appears to have been confused in examining the map. He testified that he was not familiar with maps or surveys, and knew nothing about sections, townships or ranges in that locality (R., p. 286).

He says Island 98 was caving all along down the west side in 1873 or 1874 (R., p. 278). According to his testimony, before the over-flow which washed away the remainder of Island 98, that island was probably a half mile long and about 100 to 200 yards wide (R., pp. 282-283); in 1882, Island 98 did not extend down as far as when he first knew it. The lower end was cut off "a considerable"—"way up".

This witness not only had personal knowledge and recollection of the changes made in the course of the river from 1880 on, and the corresponding changes made in the Louisiana and Mississippi shore lines, but also of the manner in which, and the time when, Island 98 disappeared. He was a citizen of Mississippi and, so far as appears, was not interested in sustaining the complainant's claim. His good faith is not questioned, he is a man of high standing and unquestionably had every opportunity to be accurately familiar with the matters about which he testified. As far as I can gather, he, Captain Prince and Captain De Lahunt were the most reliable fact witnesses produced by either party.

Captain De Lahunt, seventy years of age, a pilot and captain on the Mississippi River, testified that he first got his master's license in 1879 or 1880; that he acted as

Captain of various steamers on the Mississippi River until 1908, his run taking in the Albemarle Bend. His attention being called to Sheet 17 of the Mississippi River Commission Maps (Complainant's Exhibit C to the bill of complaint), he stated that his boats passed on the west side of Island 98 (R., p. 292); that that island absolutely disappeared—none of it was left; that it started caving at the head on the west side, went away slowly and kept chipping away and caved all the way; that in 1897 he ran right over what had been the top of the island with a loaded steamboat; that there were no trees to indicate where the island had been; that the channel between "Hopkins Towhead" and Island 98 was very narrow and difficult to navigate, but after the island gave way they had no trouble (R., pp. 292-293); that the channel was west of Island 98 when the island was there; and it ran to the east of Newman's Towhead; that while Island 98 was chipping away, it filled up on the Louisiana side. He never landed on Island 98 because of the snags and trees and things there, which made it dangerous to land. By snags and trees the witness meant the big timber on Island 98 which caved into the river. The witness was passing up and down the river there six times a week (R., pp. 293-294). When he first knew Island 98 (1879 or 1880; R., p. 289), it was nothing but a narrow strip—a mile and a half long, or something like that. At that time there was a chute running to the left of the island going south, but that was not the river. He did not go to the east of Island 98 until after it washed away (R., p. 298). When he first knew Hopkins Island there was no channel west of it, but always east (R., p. 299).

He, like Purnell, was disinterested, had ample opportunity to observe the things about which he testified, and seemed to have a good memory.

All the oral testimony introduced by complainant tends to prove that as early as 1876 the bar attached to the Louisiana shore had extended northeasterly and easterly toward the Mississippi shore about one and a half or two miles; that it grew each year toward the Mississippi shore until 1912 when it had extended northeasterly and easterly a distance of four, five or six miles. People could and did walk over this bar from the Louisiana mainland to the river channel. This condition continued until the cut-off of 1912 (Beard, R., pp. 87-88; Prince, pp. 24-25-26; p. 40; p. 42; Ernest Newman, R., p. 50; p. 52; p. 59; George Newman, R., pp. 68-69; Purnell, R., pp. 268-269).

On this bar a towheard formed known as the Newman Towhead. It took its name from the Newman family who owned the adjacent upland. It grew in height until in places it was as high as the Louisiana mainland and in some places even higher (Beard, R., pp. 88-89; Prince, pp. 26-27; p. 29; pp. 40-41; Ernest Newman, p. 53; Purnell, p. 265).

The trees on this towhead are practically all cottonwood and willow. In 1876 this growth was very small—about three to five feet high (Beard, R., pp. 88-89).

About 1880 the timber on Island 98 was all virgin growth. There were oak and gum trees about four feet through and several very large cottonwood trees, one known as the "big tree" about seven or eight feet through. This big timber was on the western part of the island. There were some other large trees on the island, not so large as those first mentioned (Purnell, R., pp. 262-263).

Thus it appears both from Complainant's Exhibits EEE and M and its oral testimony that the timber on Island 98 in 1880 was very different from and much

larger than the timber on the Newman Towhead. It nowhere appears that there were oak, gum or hackberry trees on any part of Newman Towhead.

Therefore, with respect both to the total disappearance of Island 98 and to the gradual change in the location of the river between 1824 and 1894, the testimony of complainant's witnesses and the documentary evidence in the case are in substantial agreement.

Defendant introduced oral testimony tending to prove that Island 98 did not wholly wash away.

C. F. Hume testified that he lived at Chotard (which is located on the Mississippi mainland below the southerly end of Island 98 as it existed in 1882) from October, 1896 to January, 1907; that he was familiar with Island 98 and that there was "land" there in 1896; "at that time we called it a bar" (R., p. 191). With considerable hesitation he at times calls the land he mentions "an island".

He says this island was there in 1907; that it never washed away; that it built up all the time, growing larger (R., p. 194); that in 1896 the *upper* part of that land was almost due west from Chotard Landing (R., p. 191; p. 207). He had been on "what we claim the island is now" (R., p. 195). The land he spoke of as an island was connected with the Louisiana shore in low water. He does not know whether this land or island was a part of the original Island 98 (R., pp. 207-8).

He testified that on this island there were cottonwood and willow trees three feet in diameter (R., p. 193); that the larger trees were in the lower part of the island in front of Chotard (R., pp. 200-201).

Bearing in mind that the witness is testifying to conditions that existed after 1896, it is to be observed that

the 1894 survey shows that all but a small wedge or part of the territory occupied by Island 98 in 1882 was in the main channel of the river; that this small wedge was west of the Louisiana bank line and its southerly point was about seven-eighths of a mile north of Chotard Landing. It therefore seems evident that this witness is mistaken when he testified that island did not disappear. Furthermore, in 1896, the Louisiana bar had extended very close to Chotard Landing, and his testimony appears to be more applicable to that bar than to Island 98. This is particularly significant in view of the fact that the witness at times called the land he was testifying about "a bar", and seemed quite uncertain whether it was in fact an island.

R. E. Foster testified on behalf of defendant that he knew Island 98; that since 1882 he had lived on the Mississippi side "right across the river" from that island about three miles over on the land; that he had three places in that vicinity and that the island was in sight of his lower place. He had been a member of the Legislature from Issaquena County since 1912. He had seen the island much oftener than once a month.

The testimony of this witness is self-contradictory on important points and is far from clear, due, evidently, to lack of attention to conditions existing many years before the date of his testimony.

His testimony is that the island "never all washed away; no sir; if it did, I didn't see it. All the main part is there now. It never all washed away" (R., pp. 208-209).

He could not say how much of the island did not wash away; he did not know the extent of the island. "It used to go on up further west, over the upper part there, around next to the Louisiana side". He did not know

how far it was (R., p. 210). Later he testified that he did not know the size of the island when he "first recollected it"; that it did not extend above his place but was just across the river from his lower place—not his home place but his lower place (R., p. 214). In contradiction of this latter statement he later testified that the island was opposite both his places (R., p. 215).

He also said that in the 90's when looking across to the island there was timber growing there, "the best I could tell with the eye". It might be 40 or 50 feet high, maybe more (R., p. 210). He was never on the island. He thought the river in 1882 ran between the island and the Louisiana shore, and that the river shifted there from time to time, very often (R., p. 211). He did not know how long the island was in 1882 or how wide it was, or anything about its size. He simply knew it was there in 1882 and was there at the time he was testifying (R., pp. 215-216). He could not state the size of the trees on the island, although he said that they were cottonwood and willows "from the way it looked". He testified that at the time of the hearing the Mississippi River Channel was between his place and the island. He supposed the channel between the island and the Louisiana side had filled up. The island must have caved because "the river ran on the other side and now the river runs between the island and my place. There must have considerable caved off" (R., p. 216). Again he testified that "the Island is gone—the part next to me is gone and the river channel is there". Again he says—"When the Island was there the river ran between the Island and my place. It did not run between there when I went there in 1882" (R., p. 216).

Explaining his testimony he says: "Now the whole river is between that island and my place * * * There

is no timber between that place and my place; something must have gone out''.

The only way he knew there was any of the island left was by seeing the timber over there, a distance of two miles. He had not been over there himself. He could not tell how big the timber was but he did know that the whole channel of the river was between the island and his place (R., p. 217). He could not tell at a distance of two miles whether the timber he testified about was on the main Louisiana shore or on the island because he had not been on it. He believed, however, that it was on the island (R., p. 218).

The testimony that in 1926 (when Mr. Foster was testifying) the whole river was between the island and his place on the Mississippi mainland is contrary to all other evidence, both oral and documentary, in the case. His testimony as a whole indicates a very hazy recollection and lack of careful observation.

It is entirely reasonable to assume that the land about which the witness was testifying was Newman's Towhead rather than Island 98. I think this is the fact.

Etna J. Albrittian testified on behalf of defendant that his first visit to the premises in controversy occurred in July, 1912, when he went there to look it over. At that time water was running between the island and the Louisiana shore. He went over what he calls the ''island part'' of the premises, sections 20 and 21 and a small part of 28 (R., pp. 241-242). He gives no further details in connection with this visit.

He was again on the island in the early winter of 1923. He and his son claim to hold title by conveyance from the State of Mississippi to a considerable portion of the premises in controversy, mentioning in particular

parts of sections 20, 21 and 28 and all of sections 29 and 30 on Tullos Island "as it existed in 1823". He testified that he had procured a survey to be made in 1924 by a Mr. Hull. Whether he was a licensed surveyor he does not know (R., p. 257). It does not appear that the witness was present or took any part in the survey, and the surveyor was not produced as a witness. He testified that he was familiar with the lands—with the island especially—as he had investigated them closely since he and his son made their purchases in 1923, 1924 and later. As to Section 21 he stated that he was familiar with its location on the ground "From surveyor's marks and sticks". No evidence is given as to the character or extent of the alleged survey or of its accuracy. He does not explain how he identified sections and lots from "surveyor's marks and sticks". It seems clear that his testimony with respect to the location of the premises on the ground is hearsay and not dependable.

On this unsatisfactory evidence as to the location of the premises on the ground, he testifies that the timber on lot 5, section 21, as laid down on Defendant's Exhibit N (Survey of 1823) was cottonwood and willow; that the southern and western line of the cottonwood timber was in lots 3, 4 and 5 in section 21 where there was a belt of large cottonwood and willows going to the river on the western side, and on the eastern side almost exactly parallel with the old chute line; that this timber was 24 to 26 inches in diameter (R., p. 243). In substantially these locations the 1882 survey shows the timber at that date was gum and hackberry (Defendant's Exhibit 6-D).

He said that the soil extending through lots 3 and 4, section 21, was clay.

He refers to a depression called St. Francis Chute shown on Defendant's Exhibit 6-B (Plaintiff's Exhibits M and F) as the river channel of 1823 (R., pp. 245-246). As shown previously in this report, this depression does not appear to be in the location of the 1823 channel.

He testified further that he examined the growth on section 30 as shown on the map 1823; that it consisted of cottonwood, willow, oak, sycamore and dogwood, with sizes in cottonwood and sycamore running from 16 inches to more than 3 feet in diameter. He found one cottonwood tree 10 feet 5 inches in circumference which would be about 3 feet 4 inches in diameter. These trees, he says, were located in the southeast portion of fractional section 30 (R., p. 249). He also says that the largest timber he found would probably be in that part of lot 3, section 21, that is not in the river, and in lot 4, section 21. The timber found in those two lots was the largest timber on the island. The timber he found in lots 3 and 4 and a part of lot 5 in section 21, and a small part of lot 4 in section 28, was larger than the rest of the growth on the island (R., p. 250).

The oak timber the witness claims to have found was about 16 to 18 inches in diameter and was located on the boundary line between sections 29 and 30. There were just a few oak trees. He did not pay particular attention to their size. There were not many sycamore trees, but he did not remember how many. He paid no attention to the size of these trees. They were probably not more than 16 inches in diameter. The dogwood was little scrubby growth, about 4 inches in diameter, and he noticed only one dogwood tree (R., pp. 255-256).

By reference to Complainant's Exhibit M it will be seen that section 30 is located wholly west of meridian

91° 03′ west longitude and north of parallel 32° 35′ north latitude. Referring to Chart 47 of the Mississippi River Commission Survey of 1912-13 (Complainant's Exhibit F) it appears that the only timber shown in the vicinity of what was section 30 in 1823 is cottonwood and willow. No oak, sycamore or dogwood appears.

If such trees now exist, it would seem that they are of a growth later than 1912.

In considering the testimony of this witness, the unsatisfactory character of his identification of the location of the premises on the ground is to be kept in mind. His testimony is clearly in conflict with the documentary evidence in the case. The survey of 1882 (Chart 17 of the Mississippi River Commission; Complainant's Exhibit C to its bill of complaint and its Exhibit H; Defendant's Exhibit 6-A) shows that at that date all of sections 20, 29 and 30, and a considerable part of sections 21 and 28 on Island 98 had disappeared; also that on the Mississippi mainland all of section 31 and more than half of section 32 had disappeared. It seems quite probable that all of lot 3, section 21, had been washed away. The survey of 1894 shows that the remnant of Island 98 which existed in 1882 was either in the river channel or was covered by the extension of the bar attached to the Louisiana shore. Hence the timber found by this witness in 1923 and later must have been a growth subsequent to 1894.

Gum and hackberry trees are shown on the 1882 survey of Island 98. That none of these trees were found after 1894, where that island had formerly been, is very persuasive evidence that the island had wholly disappeared.

Lawrence Towns testified in substance that he went to live at Chotard in February, 1880, when he was about thirteen years old; that he knew Island 98; that some people called it "Scruggs' Island"; that it was right in front of Chotard and ran below there near the Warren County line; it extended nearly to Brunswick (R., pp. 220, 232). For ten years he was a roustabout on Mississippi River steamers beginning when he was about 18 years of age (R., p. 232).

He said that a part of Scruggs Island had been there ever since he had been at Chotard (R., pp. 221-222); that that was the same land as Newman's Towhead (R., p. 239). After the cut-off of 1912-1913 he leased Newman's Towhead with accretions from Rufus F. and Andrew B. Learned. The property was described in the lease as containing about 2,000 acres more or less, known as "The Newman Towhead with accretions, and being a part of Bell and Willow Point Plantations", in East Carroll Parish, Louisiana (R., pp. 226-228). He did not cultivate Newman Towhead but kept 800 or 900 hogs there. He could not say whether Newman Towhead started out from the Louisiana shore but in the next breath said Newman Towhead was never attached to the Louisiana shore by sand bar (R., pp. 228, 237) although he later admitted that the sand bar started out from the Louisiana shore and went toward the Mississippi shore (R., pp. 230-231). He said that the river came through and left the Towhead on the east side towards Mississippi (R., p. 229), and that at the time he was testifying, Newman Towhead was on the Louisiana side of the river (R., p. 237).

This witness appears to be of a low grade of intelligence. His testimony is self-contradictory, incoherent

and difficult to understand. His is the only evidence in the case that tends to show that Island 98 ever extended southerly to the vicinity of Brunswick or the Warren County line. Complainant's Exhibit M shows the most southerly point of Tullos Island in 1823 was about one mile northerly of the Warren County line. The same exhibit shows that the southerly point of the island as located by the 1882 survey is about a quarter of a mile northerly from Chotard. It will be recalled that the actual survey or Chart 46 of the Mississippi River Commission shown on Complainant's Exhibit M was made in 1879-80, and the southerly point was caving at that time. It is entirely clear that at the time this testimony was taken, Newman Towhead was east of the river and not on the Louisiana side (Chart 47, Mississippi River Commission 1913-1915; Complainant's Exhibit F; Defendant's Exhibit 6-B).

At one time he stated that he was uncertain whether Newman Towhead started out from the Louisiana shore, but at another time he stated that it was never attached to the Louisiana shore.

Taken as a whole his testimony has little value.

William Miller testified that he was born in 1875 and lived on Eustacia Plantation on the Mississippi side until he was 10 years old. This was Major Higgins' Plantation and was located easterly of the northerly end of Island 98, as it is shown on the 1882 survey (R., p. 302). He thinks the island then contained about 250 acres—something like that. From Eustacia Plantation he moved to Brunswick where he lived ten years. During that time he went back to Eustacia Plantation about every week (R., p. 310). He worked on steamboats from 1897 to 1916, passing Island 98 six times a week. He saw the

island frequently from 1885 or 1886 until 1916 (R., p. 303).

He says that the lower end of Island 98 all washed away but the upper end did not. He thinks that 75 or 80 acres remained. After the washing stopped the island built back in some places; he does not say where (R., p. 304).

His testimony with reference to the location of Island 98 with respect to the river channel is very conflicting. He stated that he first knew the island in 1882, 1883 or 1884 (R., p. 307). The main channel was then on the east side of the island next to the Mississippi shore (R., p. 304). In contradiction of this he later stated that at his first recollection the channel was on the west side of the island and between the island and the Louisiana shore (R., p. 314). In 1886 it was on the west side of the island but it finally changed back to the east side and washed away the Eustacia Plantation; that this was in 1910 or 1912, and that this change was all made in high water and was "kind of gradual" (R., p. 305). Again he testified that the main channel was never between the island and the Mississippi mainland except in high water; that during low water he could always walk across from the Mississippi shore to the island, and that the big steamboats never went between the island and the Mississippi shore except during high water time (R., pp. 314-315). When he told about the channel changing back he was talking about the cut-off of 1912. That was the only change back that he could remember (R., p. 316).

It is clear from all the other evidence in the case that for several years prior to 1912 the main channel of the river was well to the east of what had formerly been the location of Island 98. Had part of the island remained

the main channel of the river would have been between the Mississippi mainland and the island.

His testimony with respect to the Newman Towhead is clearer and more consistent. He said that Willow Point was located opposite the island; that Newman's Towhead was located on the other side of the river; that it was higher than the balance of the bar; that the Willow Point bar was some 4 or 5 miles long, and that it extended out from the Louisiana shore to the channel of the river and the Newman Towhead "was right there at the end of the bar on Louisiana side"—he "used to put off freight there" (R., p. 317).

The witness knew Captain John De Lahant; he was pilot on practically all of the boats the witness worked on (R., p. 318).

To his knowledge there was nothing but cottonwood and willow on Island 98, and that in 1882 the island contained about 250 acres "maybe" (R., p. 308).

He testified that the island did not cave much between 1882 and 1896; that it caved mostly in 1897; that before 1896 it had caved some on the outside next to the river —"It caved right smart on the lower end", and that the big trees fell into the river sometimes (R., p. 310).

Because of the unsatisfactory character of his evidence in respect to the location of Island 98, I think that little, if any, weight should be given to his evidence in that regard. His testimony in respect to Newman's Towhead was more satisfactory, but it was given on cross examination and in response to leading questions.

Upon the whole, up to 1894 the clear weight of the evidence, both documentary and oral, is to the effect that the river channel had moved gradually from its position in 1824 to that in 1894; that this change had been pro-

duced by erosion on the Mississippi shore and accretions to the Louisiana shore; that when the 1894 survey was made all of Island 98 had washed away and the river had cut into the Mississippi mainland a substantial distance; that accretions to the Louisiana shore had followed the river channel and covered the eroded Mississippi territory, including Island 98, up to the Louisiana bar line of 1894 as shown on the survey of that year.

The evidence is undisputed that between 1894 and 1912-1913 extensive erosions occurred on the Mississippi mainland and extensive accretions attached to the western shore of the river. The failure to sustain defendant's theory that Island 98 never wholly washed away and that the changes in the location of the river channel between 1824 and 1894 had been due to avulsions, leaves without support its contention that the extensive accretions to the westerly shore of the river, which admittedly took place between 1894 and 1912-1913, were accretions to Mississippi territory. On the contrary, the only reasonable deduction from the evidence is that these accretions attached to Louisiana territory and belonged to that State.

Had a very small part of Island 98 remained as claimed by defendant, that part was so insignificant that it is inconceivable that the extensive accretions arising from the erosion of the adjacent Mississippi mainland both northerly and southerly from such remnant of the island (if any remained), attached to that small parcel of land instead of to the extensive bar which moved from the Louisiana shore northeasterly, easterly and southeasterly.

I, therefore, find and so report that the premises in controversy were formed by accretions to the Louisiana shore between 1823 and the avulsion of 1912-1913 when

the river changed its channel to substantially its present location. There may be a very small part of the premises bordering on what was the channel of the river before the avulsion of 1912-13 which were formed by accretions subsequent to that time, due to the fact that the river continued for some little time after the avulsion to flow partially through its old channel, although the main channel had shifted as a result of the avulsion. It is impossible from the evidence to state the extent of these accretions. The rule seems to be that accretions formed under such circumstances belong to the land to which they attach in the same manner as though the main channel of the river had been there. *Arkansas* v. *Tennessee*, 247 U. S. 461; *Same* v. *Same*, 269 U. S. at p. 157. It will doubtless be necessary, therefore, for any commission which may be appointed to locate the middle of the navigable channel of the river before the avulsion of 1912-13, to take into account the accretions which formed on the westerly side of that channel subsequent to the avulsion of 1912-13 and before the river ceased to flow at all through that old channel.

Exercise of Dominion.

Defendant contends that it should have a decree establishing its title to the premises in dispute because of its alleged long possession of, and its exercise of sovereignty and dominion over the same, and complainant's alleged acquiescence therein.

In *Michigan* v. *Wisconsin*, 270 U. S. p. 295, this Court says (p. 308):

> "The rule, long established and never doubted by this court, is that long acquiescence by one state in the possession of territory by another, and in

> the exercise of sovereignty and dominion over it, is conclusive of the latter's title and rightful authority."

The parties accept this statement of the law, but complainant denies that it is applicable to the present case, while defendant avers that it is.

The essential elements of this rule are, long continued possession and the exercise of sovereignty and dominion by one party, and acquiescence therein by the other. If either is lacking, the rule does not apply.

What constitutes possession, the exercise of sovereignty and dominion, and acquiescence therein, depends upon the character of the territory in dispute and all the other pertinent facts and circumstances of each particular case.

On page 22 of defendant's reply brief, the character of the territory in dispute is described as follows:

> "The territory which is here in dispute is low, alluvial lands along the Mississippi River, subject to overflow at all times when the river rises and unprotected in any manner whatsoever by levees or dikes. For these reasons, the land is not fitted for cultivation or settlement except in the most haphazard manner, but has grown up in cotton wood and willow timber."

This description is substantially correct except that the growth of timber thereon appears to be confined to a comparatively small area of this territory.

Considering this phase of the case, and bearing in mind the essential elements of the rule as above stated, it will be observed that the 1882 survey discloses the first definite evidence of accretions attached to the Louisiana shore which had extended over the location of territory

formerly belonging to Mississippi. At the date of that survey all of fractional section 30, a large part of section 29, and a small part of section 28, in Island 98, together with a substantial part of section 31 on the original Mississippi mainland, had been covered by the extension of the sand bar attached to the Louisiana shore.

The 1894 survey shows that the Louisiana sand bar had extended over all the location of Island 98 as it existed in 1823, except that part thereof which was then in the river channel, and that the northeasterly end of that bar had extended onto what formerly had been Mississippi mainland (Complainant's Exhibit C to the bill of complaint). After 1894 and down to the 1912-1913 cut-off, these accretions continued to extend rapidly over the original Mississippi mainland until they ultimately covered parts of sections 9, 10, 15, 16, 17, 22, 27, 28, 31 and 32. Subsequent to that cut-off the accretions continued but at a much slower rate, until the current ceased to flow through the old channel.

Complainant's evidence shows that the Newman house was about 100 yards from what was regarded as the original Louisiana mainland, as evidenced by the topography, the character of the soil, and the kinds of timber growing thereon; that the house was between the levee and the river (George Newman, R., p. 69); that it caved into the river around 1904, 1905 or 1906 (R., p. 79). This evidence tends to show that the house was built on accretions formed subsequent to 1824. That being the case the Newman possession extended to accretions, at least to those which had attached up to the time the house caved into the river, and such possession continued unless and until actual dispossession by the adverse possession of other persons. *Deputron* v. *Young,* 134 U. S. 241.

The Newman Towhead took its name from the Newman family; they claimed to own it and pastured cattle thereon every year (Ernest Newman, R., p. 53; George Newman, R., p. 73, p. 78).

After the cut-off, Lawrence Towns rented from the Messrs. Learned for 6 or 8 years, premises described in the lease as part of Bell and Willow Point plantations located in East Carroll Parish, Louisiana "containing about 2,000 acres, more or less, being what is now known as Newman Towhead". During his term the lessee kept hogs on the premises, at times having as many as 800 or 900 there (R., pp. 226-227-228).

The foregoing facts tend to prove actual possession under title derived from Louisiana up to a few years before the commencement of this suit.

Complainant's witnesses had never heard of any claim of title to the premises in dispute by defendant, or anyone claiming under it, until a very recent date. (Beard, R., p. 90; Ernest Newman, R., p. 54; George Newman, R., p. 70).

Defendant's testimony fails to show that it, or anyone claiming under it, ever took open and notorious possession of any part of the disputed territory. Mr. Albrittian testified that he and his son bought from the defendant certain of the disputed premises in 1923 and 1924. On the assessment rolls in evidence the Albrittians first appear as owners in 1925-1926 (Defendant's Exhibit A, p. 30).

So far as actual physical possession is indicated by the evidence, the advantage is with Louisiana.

The Newmans were assessed and paid taxes in East Carroll Parish, Louisiana. These accretions were never listed for taxation by the Newmans while owned by them,

nor during that time, were they assessed by the taxing authorities of Louisiana (R., p. 53).

The only dominion which defendant claims to have exercised over the disputed premises or any part thereof was by assessing and selling them for unpaid taxes.

Defendant's Exhibit A, pages 1 to 31 inclusive, consists of the assessment rolls covering the premises in question and other property, for certain years between 1848 and 1926. The important period for present purposes is from and after 1880.

An examination of the sheets of this exhibit shows that from 1883 on, certain lands located within the original boundaries of Tullos Island (Island 98) and on the adjacent Mississippi mainland were marked "in river" or "in Mississippi river", and from time to time were assessed for taxation. At times the assessment of lands so marked was merely nominal and at other times it was for substantial amounts.

From the assessment roll of 1919-1920 to these of 1926-1927 inclusive, all the sections constituting the original Tullos Island, except fractional section 30, were marked "in river" or "in Mississippi river". Section 30 was so marked on the assessment rolls for 1919-1920. For the other years between those dates, no notation appears with respect to section 30. From 1883 to 1887-1888 inclusive, section 30 is marked "in Mississippi River", and the valuation for each year appearing on these sheets is $1.00. From 1919-1920 to and including 1926-1927 this section is valued at $50. Whenever the section appears on the assessment rolls beginning with 1848, its area is stated to be 95 acres. Yet the 1882 sur-

vey of the Mississippi River Commission shows this section had then been entirely covered by the accretions attached to the Louisiana shore.

"Island 98" appears as a separate item on the assessment rolls for 1889, 1892, 1896 and 1898. On the 1889 assessment roll it is sectionized in section 31 on the Mississippi mainland, yet on the 1882 survey of the Mississippi River Commission the southerly end of Island 98 is more than one mile northerly from section 31.

On the assessment roll for 1889, the area of the island is stated to be 1,000 acres valued at $500. On the 1882 roll, the area is stated to be 50 acres, valued at $50. On the 1896 and 1898 rolls the area is stated to be 1,000 acres valued at $1.00. In 1892, 1896 and 1898 the island is not assigned to any section.

These assessment rolls are clearly contradictory of the contention of defendant that Island 98 never wholly washed away. If it was in the river in the years indicated by the assessment rolls it must then have been wholly washed away.

Due to the uncertain and conflicting character of the assessments, they fail to substantiate defendant's claim that it exercised any real dominion over the disputed territory.

But in addition to this there is no evidence in the case that Louisiana had any knowledge whatever of the alleged exercise by Mississippi of sovereignty or dominion over the disputed territory until a short time prior to the bringing of this suit. In the absence of knowledge there can, of course, be no acquiescence.

Conclusions and Recommendations.

On the whole case I, therefore, find and respectfully report—

1. That the changes in the location of the channel of the Mississippi Rver at the place under examination herein, from 1823 to the change which took place in 1912-1913, were due to gradual erosions on the Mississippi shore and gradual accretions to the Louisiana shore, and that none of said changes was due to avulsions.

2. That the change in the location of the channel of the river which took place in 1912-1913 was due to an avulsion whereby a new channel was formed in approximately the location where it existed at the time the testimony herein was taken.

3. That the accretions which attached to the Louisiana shore up to the avulsion of 1912-1913, and thereafter so long as the current continued to flow in the channel as it existed prior to said avulsion, became Louisiana territory.

4. That the boundary line between the parties hereto was not changed by the avulsion of 1912-1913.

5. That Mississippi did not, by possession or the exercise of sovereignty or dominion over the disputed territory, acquire any right or title thereto.

6. That at this time the true boundary line between the States of Louisiana and Mississippi is the middle of the navigable channel of the Mississippi River as said channel was located at the time when the current ceased to flow therein because of the new channel produced by the avulsion in 1912-1913.

I, therefore, recommend:

1. That a decree be entered herein in conformity with these findings.

2. That a Commission be appointed by this Court to locate and fix on the ground the true boundary line between the parties hereto in conformity with these findings.

Respectfully submitted,

THOMAS G. HAIGHT,
Special Master.

FILE COPY

SEP 30 1930
CHARLES ELMORE CROPLEY
CLERK

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

NO. [redacted]IGINAL 6
IN EQUITY

STATE OF LOUISIANA, Complainant,

vs.

THE STATE OF MISSISSIPPI, Defendant.

EXCEPTIONS TO REPORT OF SPECIAL MASTER.

GEORGE T. MITCHELL,
Attorney General of Mississippi.

PAT HENRY,

ELMER C. SHARP,

HIRAM H. CREEKMORE,
Solicitors for the State of Mississippi, Defendant.

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

NO. 9, ORIGINAL

IN EQUITY

STATE OF LOUISIANA, Complainant,

vs.

THE STATE OF MISSISSIPPI, Defendant.

EXCEPTIONS OF THE STATE OF MISSISSIPPI, DEFENDANT, TO THE REPORT OF HONORABLE THOMAS G. HAIGHT, SPECIAL MASTER.

The State of Mississippi, Defendant, excepts to so much of the report of Honorable Thomas G. Haight, Special Master as finds:

A. That the changes in the location of the channel of the Mississippi River at the place under examination herein, from 1823 to the change which took place in 1912-13, were due to gradual erosions on the Mississippi shore and gradual accretions to the Louisiana shore, and that none of said changes was due to avulsions.

(a) 1. That the change in the position of the Mississippi River between 1824 and 1866 was not produced by avulsion.

(a) 2. That up to 1870 the change in the location of the Mississippi River was not by avulsion but by erosion and accretion.

(a) 3. That in 1882 all that part of the original Island Number 98 or Tullos Island located in Sections 20, 29 and 30 had disappeared as had also a considerable portion of the part located in Sections 21 and 28.

(a) 4. That at and prior to 1882 accretions attached to the Louisiana shore covered the Southwest corner of Section 20, a large part of Section 29 and all of Section 30, within the boundaries of Tullos Island as it existed in 1823, and also portions of Section 31 and 32 on the Mississippi mainland of 1823.

(a) 5. That at and before 1894 by erosion all of the remnant of Island 98 had disappeared.

(a) 6. That by accretions the bar attached to the Louisiana shore had extended northeasterly and easterly and had covered all that part of the former Mississippi territory lying westerly of the 1894 bar line and including all of Tullos Island as it existed in 1823.

(a) 7. That in 1894 all of Island 98 was either covered by the extension of the Louisiana bar or was in the main channel of the river.

(a) 8. That the change in the location of the river between 1882 and 1894 was not due to an avulsion.

(a) 9. That in 1882 Tullos Island was not divided by a chute into two parts, Upper Tullos and Lower Tullos.

(a) 10. That the premises in controversy were formed by accretions to the Louisiana shore between 1823 and 1912-1913, when by avulsion the river changed its channel to substantially its present location.

(Complainant's exhibits "A," "C," "G," "H," and "M."

Defendant's exhibits "2," "3," "4A," "4B," "4C," "4D," "5," "6A," "6B," 6C," "6D," "6F," "7A," "7B," "V1," "V2," consisting of maps.

Defendant's exhibits "G," "H," "I," "J," "K," "L," "M," consisting of documents not printed.

Printed transcript of record: Testimony of Horace M. Marshall, pages 168-188 inclusive and particularly 172, 173, 174, 175, 177, 178, 180, 181, 183, and 185.

Testimony of C. F. Hume, pages 190, 191, 192, 204, 205.

Testimony of Lawrence Townes, pages 221, 222, 233, 236, 237, 238.

Testimony of Ernest Newman, pages 51, 52, 55, 58, 59, 60 and 63.

Testimony of George R. Newman, page 68.

Testimony of W. H. Reed, pages, 104, 105, 107.

Testimony of E. T. Purnell, page 265.

Testimony of E. J. Albrittan, pages 242-251 inclusive.)

B. That the accretions which attached to the Louisiana shore up to the avulsion of 1912-1913 and thereafter, so long as the current continued to flow in the channel as it existed prior to said avulsions, became Louisiana territory.

C. That Mississippi did not, by possession or the exercise of sovereignty or dominion over the disputed territory, acquire any right or title thereto.

(c) 1. That Louisiana had no knowledge of the exercise by Mississippi of sovereignty or dominion over the disputed territory until a short time prior to the bringing of this suit.

(c) 2. That the evidence fails to substantiate defendant's claim that it exercised any real dominion over disputed territory.

(Defendant's exhibits "A" to "N" inclusive and V-2").

D. That at the time of the filing of the report of the Special Master the true boundary line between the States of Louisiana and Mississippi is the middle of the navigable channel of the Mississippi River, as said channel was located at the time when the current ceased to flow therein because of the new channel produced by the avulsion in 1912-1913.

Respectfully submitted,

GEORGE T. MITCHELL,
Attorney General of Mississippi.

PAT HENRY,

ELMER C. SHARP,

HIRAM H. CREEKMORE,
Solicitors for the State of Mississippi, Defendant.